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Final Report
To The General Court
Of The Special Commission
Concerning State And County Buildings

December 31, 1980

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VOLUME 1

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BANCROFT LITTLEFIELD, JR.
(Chief Counsel)

December 31, 1980

Mr. Wallace C. Mills
Clerk of the House of Representatives
State House, Room 145
Boston, MA 02108

Dear Mr. Mills:

Enclosed for filing today is the Final Report of the Special Commission Concerning State and County Buildings. The participation of the Attorney General in this Filing is limited in accordance with his separate views in Volume IX.

Very truly yours,

Francis X. Bellotti
Francis X. Bellotti

Frances Burke
Frances Burke

Peter Forbes
Peter Forbes

Daniel O. Mahoney
Daniel O. Mahoney

Walter J. McCarthy
Walter J. McCarthy

John William Ward
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Enclosure



The Commonwealth of Massachusetts

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(Chief Counsel)

December 31, 1980

The Honorable William M. Bulger
President of the Senate
State House, Room 330
Boston, Massachusetts 02133

The Honorable Thomas W. McGee
Speaker of the House of Representatives
State House, Room 356
Boston, Massachusetts 02133

Dear Mr. President and Mr. Speaker:

We have today delivered to the Clerks of the Senate and the House the Final Report of the Special Commission Concerning State and County Buildings. With its submission the Special Commission comes to an end. It has been a long and arduous experience, but I speak for all the Commissioners and their staff, when I say it has truly been a privilege and a pleasure to have served the General Court and the people of the Commonwealth of Massachusetts.

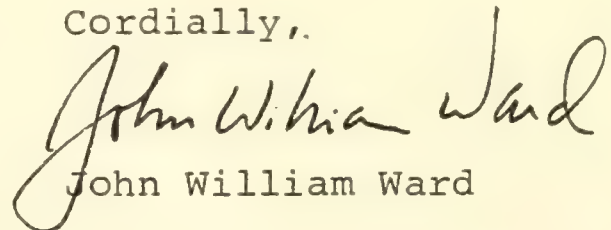
With literally my last words as Chairman of the Special Commission, I wish especially to give public praise to my fellow commissioners who have given their time and their talent freely in public service. We have been deeply involved together now for more than two years. It has been humanly satisfying as well as professionally rewarding to have been their Chairman.

In any enterprise as complex as the work of the Special Commission, one depends on many others. The Commissioners believe they have had the benefit of the finest professional investigative and legislative staff to have been assembled in the history of the Commonwealth. We owe them much. We are in debt to many others, too, and our "Acknowledgements" of their help is, we know, insufficient to express our gratitude. But I wish especially, as we submit our final report to you, to thank you for your ready availability whenever the need arose. There have been differences between us, to be sure, but they never diminished your public responsibility toward the Commission.

The Honorable William M. Bulger
The Honorable Thomas W. McGee
December 31, 1980
Page 2

Since it is the last day of 1980, as well as the last day in the life of the Special Commission, may I wish you a good new year.

Cordially,

A handwritten signature in cursive script that reads "John William Ward". The signature is fluid and elegant, with a large initial "J" and a long, sweeping underline.

John William Ward

JWW:mec

ANALYTICAL TABLE OF CONTENTS

VOLUME I

FOREWORD

Letter of Transmittal to the Clerk of the House of Representatives	i
Letter of Transmittal to the President of the Senate and the Speaker of the House of Representatives	ii
Analytical Table of Contents	iv
Volume I	
Foreword	iv
Volume II	
Report on the Investigation of MBM and Related Entities	vi
Volume III	
Description of Findings in Individual Cases: Award of Design Contracts	
A New Campus for Holyoke Community College	xi
Masiello: If a Hand Is Open	xiii
Volume IV	
The Award of Design Contracts: an Overview	xvi
Desmond & Lord, Inc.	xviii
Volume V	
Suppliers	xx
Influence Exercised on Administrative and Legislative Action	xxii
Laundering Improper Campaign Contributions	xxiii
Cash Generation and Case Studies	xxiv
Volume VI	
Construction Defects: State and County Buildings	xxv
Volume VII	
Systems Issues and Findings	
The System of Public Construction in Massachusetts	xxvi
Volume VIII	
Systems Issues and Findings	
The System of Public Construction in Massachusetts (conclusion)	xxx
Campaign Finance	xxxiii
Detecting and Preventing Fraud	xxxv
Piloting the Legislation	xxxv
The Special Commission in Court	xxxvi
Volume IX	
The Commission's Narrative	xxxvii
Separate View	xl

Volume X	
Footnotes for Volumes III, IV, V, VI, and IX	xli
Volume XI	
Documentary Appendices to Volumes II, III, IV, V, and VI	xlii
Volume XII	
Footnotes and Appendices to Volumes VII and VIII	xliii
Members of the Special Commission Concerning State and County Buildings	
Francis X. Bellotti	1
Frances Burke	2
Peter Forbes	3
Daniel O. Mahoney	4
Walter J. McCarthy	5
John William Ward	6
Lewis H. Weinstein	7
Acknowledgments	9
What We Have Learned: the Costs of Corruption	19
I. What Have We Learned?	
Corruption as a Way of Life	21
Political Influence in Doing Business with the State	24
Shoddy Work and Debased Standards	27
The "System" of Administration	31
II. What Have We Proposed to Do?	33
III. What of the Future?	40

VOLUME II

REPORT ON THE INVESTIGATION OF MBM AND RELATED ENTITIES

TABLE OF CONTENTS

<u>CHAPTER I</u>	<u>Why the Commission Investigated Matters Relating to MBM</u>	1
<u>CHAPTER II</u>	<u>Corporate Overview of MBM</u>	5
A.	The Formation and Early History of MBM	5
B.	The Unsuccessful Attempt in 1969 to "Go Public"	6
C.	The Acquisition in 1971 of MCM	8
D.	The Combining in 1972-73 with IMS	12
E.	The Separation in 1975 from IMS	15
F.	The Termination of MBM in 1978-79	15
<u>CHAPTER III</u>	<u>MBM's Activities in Massachusetts prior to 1969</u>	17
A.	Activities during the Peabody Administration (1963-64)	17
B.	Activities during the Volpe Administration (1965-68)	21
<u>CHAPTER IV</u>	<u>MBM's Procurement of the UMass/Boston Project Management Contract</u>	26
A.	Introduction	26
B.	MBM's Decision in Late 1968 or Early 1969 to Make a Major Effort to Win Large Public Contracts in Massachusetts	27
C.	MBM's Attempts to Win a Contract to Provide a Management Information System for the BBC	29
D.	The Commonwealth's Decision to Use an Outside Project Management Firm on the UMass/Boston Project	34
E.	MBM's Initial Awareness of the Potential UMass/Boston Project Management Contract	42
F.	Issuance of the Formal Request for Proposals by the Designer Selection Board	44
G.	MBM's Decision to Have Former Governor Endicott Peabody Assist in MBM's Efforts to Obtain the UMass/Boston Contract	47
H.	The Fee Arrangement Between MBM and the Peabody Firm	51
I.	The October 1, 1969 Meeting of Peabody and MBM's Officers Regarding the UMass/Boston Contract	52
J.	The Formal Procedure by Which the UMass/Boston Project Management Contract Was to Be Awarded	53



K.	Peabody's Early Contacts with UMass Officials	56
L.	Peabody's Early Contacts with BBC Officials	58
M.	Activities by MBM Officials during October and November 1969	60
N.	The Short-lived Seelye-McKee Joint Venture Proposal	62
O.	Interviews of Five Semi-Finalists by the Designer Selection Board	63
P.	Endicott Peabody's Discovery of, and Response to, a Conflict of Interest	65
Q.	The DSB's Selection of Three Finalists on December 17, 1969	71
R.	The Alleged Meeting of Endicott Peabody and Deputy A&F Commissioner Albert H. Zabriskie on December 18 or 19, 1969	73
S.	The Alleged Meeting of MBM Vice President Anthony Mansueto and MBM Salesman Martin Heyman with A&F Commissioner Donald Dwight on December 19, 1969	76
T.	The MBM Christmas Party in New York on December 19, 1969	79
U.	The "Kick-off Meeting" for the UMass/Boston Project on Monday Morning, December 22, 1969	81
V.	Donald Dwight's Selection of MBM as the Winner of the UMass/Boston Project Management Contract	83
W.	Dwight's Selection of Haldeman & Goransson for One of the UMass/Boston Architectural Contracts	85
X.	Governor Francis W. Sargent's Knowledge or Lack of Knowledge of the Award of the UMass/Boston Project Management Contract	89
Y.	MBM Vice President Anthony E. Mansueto's Testimony About the UMass/Boston Contract	90
<u>CHAPTER V</u>	<u>Evidence Relating to Whether MBM Obtained the UMass/Boston Contract Through a Corrupt Agreement</u>	94
A.	Introduction	94
B.	Evidence that Contracts Were Awarded by the Volpe and Sargent Administrations in Return for Prior Commitments by the Winning Firms to Make Illegal Cash Payments	94
C.	Evidence that MBM Officials Admitted to Others that MBM Made a Commitment to Pay Cash to Manzi in Connection with the UMass/Boston Contract, and that Manzi Repeatedly Complained that MBM Was Slow in Living Up to Its Commitments on the UMass/Boston Contract	98
	1. Testimony of Frank R. Masiello, Jr.	98
	2. Testimony of William V. Masiello	101
	3. Testimony of Daniel J. Shields	101



4. Testimony of William F. Harding	102
5. Testimony of Stanley Davis	102
6. Affidavit of Maurice Khoury	103
D. Evidence that MBM Generated Tens of Thousands of Dollars in Cash for Payment to Politicians	103
1. Cash Generation and Questionable Accounting Practices by MBM	104
2. Alleged Cash Generation for MBM by Maurice Khoury	110
E. Evidence That MBM Paid At Least \$30,000 in Cash to Republican Fundraiser Albert Manzi After MBM Won the UMass/Boston Contract	114
1. The October 16, 1970 Payment to Fundraiser Albert Manzi	114
2. The Alleged Payment to Manzi in February 1972	117
3. The May 18, 1972 Parker House Meeting and MBM's May 23, 1972 Payment to William Masiello for Manzi	119
F. Conclusion	124
<u>CHAPTER VI</u> <u>The Terms of MBM's UMass/Boston Contract, MBM's Anticipated Profit, and MBM's Performance on the Contract</u>	126
A. Terms of the Contract	126
B. MBM's Anticipated Profit	130
C. MBM's Performance	131
<u>CHAPTER VII</u> <u>Challenges to MBM's UMass/Boston Contract</u>	135
A. The Bill Filed by Rep. Thomas F. Fallon in 1970	135
B. The Newspaper Articles in 1971 Criticizing MBM's UMass/Boston Contract	140
C. The Investigation in 1971 by a Special Legislative Committee Chaired by Senator Joseph J.C. DiCarlo and Representative Ralph L. Sirianni, Jr.	147
1. The Filing of an Order by DiCarlo, Sirianni, and Representative William F. Hogan Calling for an Investigation of MBM's UMass/Boston Contract	147
2. The February 1971 Meeting at DiCarlo's Home	149
3. Changes in the Wording of the Order Calling for an Investigation of MBM's UMass/Boston Contract	152
4. MBM's Discussions with Kelly about the DiCarlo-Sirianni-Hogan Legislation	153
5. The Selection of Members for the Committee	157
6. MBM's Purchase of Tickets for House Speaker Bartley's "Brunch"	160
7. The Investigation Conducted by the DiCarlo-Sirianni Committee	162
8. The First Draft of the DiCarlo-Sirianni Committee Report	170

9.	The Intercession of Senator Ronald C. MacKenzie and the Changing of the DiCarlo-Sirianni Committee Report	176
10.	Payments Made by MBM to DiCarlo and MacKenzie	188
11.	DiCarlo's Visit to MBM's New York Office	198
D.	The Investigation in 1972-73 by Auditor Joseph A. Davey of the Post Audit Bureau	202
<u>CHAPTER VIII</u>	<u>The Investigation, Prosecution, Appeals, and Post-Trial Motions of Joseph DiCarlo and Ronald MacKenzie</u>	208
A.	The Investigations of MBM in Philadelphia Which Led to the First Allegations About DiCarlo and MacKenzie	208
B.	The Forwarding of the DiCarlo-MacKenzie Allegations to the Boston Office of the Federal Bureau of Investigation	211
C.	The First Knowledge by DiCarlo and MacKenzie that They Were Being Investigated	213
D.	Events Leading to the DiCarlo-MacKenzie Indictments	214
E.	The DiCarlo-MacKenzie Trial	216
F.	Post-Trial Proceedings and Allegations	220
G.	Attempts to Induce MacKenzie Not to Implicate DiCarlo	228
<u>CHAPTER IX</u>	<u>The Manzi-Masiello Trial in 1979</u>	233
A.	Events Preceding the Manzi-Masiello Trial	233
B.	The Trial and Acquittals	236
C.	Masiello's Admission to the Commission that Masiello Committed Perjury at the Manzi-Masiello Trial; Masiello's Allegation that Manzi Also Committed Perjury at the Manzi-Masiello Trial; Related Allegations	240
<u>CHAPTER X</u>	<u>Activities in Massachusetts of William F. Harding and Daniel J. Shields at Times When They Were Not Working for MBM</u>	242
A.	Why the Commission Has Investigated the Activities in Massachusetts of Harding and Shields at Times When Harding and Shields Were Not Working for MBM	242
B.	Activities of Harding and Shields in Massachusetts Prior to Joining MBM	244
C.	Efforts by Harding and Shields to Win Public Contracts Through Essex County Commissioner Daniel J. Burke	249
1.	Initial Contacts Between Harding and Burke	249
2.	The MacKenzie-Tully Bill	251
3.	Burke's Agreement to Help Harding and Shields Obtain Essex County Contracts	252
4.	The Formation of PCM	254
5.	The BBC's Position Regarding Use of PCM by Essex County	256

6. Essex County Contracts Awarded to PCM	260
7. Payments to Burke by PCM Officials	262
8. The Refusal by Essex County Treasurer Thomas F. Duffy to Pay PCM's Invoices	265

<u>CHAPTER XI</u>	<u>Conclusion</u>	269
-------------------	-------------------	-----

APPENDICES

A. The Fee Arrangement Between MBM and the Peabody Firm	A-1
B. Evidence Bearing on MBM's Activities in Other States	A-16
C. MBM's Attempt to Win a Project Management Contract for the UMass/Worcester Medical School	A-29
D. MBM's Attempts to Win Contracts Regarding the Middlesex County Courthouse	A-35
E. MBM's Successful Efforts Regarding Its "Delay Claim" in 1972	A-40
F. MBM's Fee for Work at the Worcester County Jail	A-48

VOLUME III

DESCRIPTION OF FINDINGS IN INDIVIDUAL CASES: AWARD OF DESIGN CONTRACTS

TABLE OF CONTENTS

<u>A New Campus For Holyoke Community College</u>	1
Background of the Holyoke Project	2
The DMJM/Masiello Relationship	4
DMJM's Interest in Massachusetts	4
"An Architect Who Was Politically Connected"	5
Masiello's Strategy to Win A Contract	6
"Payment of Money in Consideration for Obtaining Contracts"	7
The Selection Process - Official and Unofficial	9
A Call From Toots Manzi	10
"He Would Completely Wash His Hands of Me"	10
What Manzi Required	11
Masiello's Trip to California	12
Masiello's Guidelines: No Money Up Front	13
Masiello's Negotiations with Manzi	14
The Mechanics of Making the Contribution	15
Masiello Comes to Terms with Manzi	16
The Acquisition of the Contract	17
Smith Meets Manzi and Makes the Deal	18
Manzi Recommends MBM	19
The DSB Interview	20
The Commissioner's Selection	21
The Project Begins	23
Manzi's Weekly Calls to Masiello	24

DMJM's First Payment to Manzi	26
Manzi Monitors for Payments to DMJM	26
DMJM's \$5,000 Check	27
How the Check was Cashed	28
The Delivery to Manzi: "Is That All?"	29
Preparation of Plans and Specifications	30
The Masiello - DMJM Contract Dispute	31
DMJM's Differences with Manzi	32
The Masiello - DMJM Meeting in Washington in June, 1970	33
The Sonesta Hotel Meeting in July, 1970	34
The BBC Meeting on Costs	35
The Second Delivery to Manzi	36
"What in Hell am I Going to Do with Five-Dollar Bills?"	37
Manzi's Pressure Continues	39
"Deadbeats"	39
The Project Goes Forward	40
"I am Under a Lot of Pressure from My People"	41
DMJM's Third Delivery to Manzi	43
The California Cashier's Checks	43
Masiello's Continuing Contract Dispute with DMJM	44
Kussman Reviews the Contract for Masiello	45
Masiello's Further Negotiations with DMJM	46
DMJM's Fourth Delivery to Manzi	48
More Cashier's Checks	49
Further Masiello - DMJM Negotiations	51
DMJM's Fifth Payment to Manzi	52
DMJM's Continued Services for Phase II	53
Masiello Uses Manzi's Leverage over DMJM	53
Masiello Uses Influence in the BBC as Leverage over DMJM	54
DMJM's Sixth Delivery to Manzi	56
Masiello's Trip to California	58
The End of the Masiello - DMJM Relationship	60
Conclusion	63

<u>Masiello: If A Hand Is Open</u>	1
The Masiello Strategy: Filling the Open Hand	2
Masiello's Background	4
The Public Relations Approach	5
Winning and Dining	6
Masiello's Record of Obtaining State and County Projects	6
Brief History of the Firm	6
Public Architecture the Main Work of the Firm	7
The Investigation	14
Cash Generation	17
 <u>Frank Masiello in the 1960's: The Education of A Political Architect</u>	 23
Introduction	23
The Best Way to Continue Contracts	24
The Connelly School: A Very Slim Year	27
The Gentile School Project	28
MCI Norfolk: A Job Not Worth Going After	31
Manzi Puts Pressure on Masiello	32
"This Is Coming Out of My Hide"	33
More Money Authorized for the Gentile Project	35
Over Two Million Dollars in Design Fees for the Masiello Firm	35
 <u>How Masiello Used Political Contributions As "Door Openers"</u>	
<u>To Suffolk County Contracts</u>	37
Introduction	37
Masiello's Political Fundraising Activities: The Door Opener	37
Vey's Fundraising Activities: The Political Boiler Room	40
The Dudley - Harrison Fire Station	44
An Unusual Designer Selection Procedure	44
An Erroneous Fee Calculation by Vey in Masiello's Favor	46
A Phony Change Order to Fund a Political Contribution	47
The Charles Street Jail/Deer Island Project	50
Another Unusual Selection Procedure	50
The Connection Between Contributions and Contracts	53
Keeping the City "Out of the Prison Business"	54
Overpayment of Design Fees Through Padded Time Records	55
"I Became Part of His Scheme"	58

Designing A Summer Home for Sheriff Eisenstadt	59
A "Large, Assuming Home"	59
Taxpayers Foot the Bill	61
Conclusion	61
<u>The Masiello Firm's Series of Contracts with Worcester County</u>	65
<u>Shrewsbury Housing Authority</u>	88
Introduction	88
One Version of the SHA Selection Process	88
The Possibility of a New Selection Procedure	91
William Masiello's Pursuit of SHA Work	92
An Increase in Fees for the Masiello Firm	96
Payments to Masiello & Associates and Payments on a Promise	98
<u>Taunton Housing Authority</u>	105
Introduction	105
Background to the Contract Award	106
Payments	108
Fundraising	111
Kitchen Cabinets	112
<u>Fall River Housing Authority</u>	115
<u>Masiello's Strategy to Win the Springfield Mental Health Center Contract</u>	122
Introduction	122
The Unexpected Loss of the Bristol County Jail	122
The Beginning of A New Strategy	124
Truce Discussions	124
Making Peace With Zuchero	125
Becoming One of Three	126
"Serenading" Kerr for His DSB Vote	126
Lining Up the Vote of the BBC	127
Masiello Re-Contacts Zuchero	128

The Final Step in the Plan	130
Input Into Designer Selection: Whose Checkmarks	132
The Winning of the Springfield Project	134
Masiello Makes Good on His Commitment	135
The Project Dwindles to a Halt	138
Conclusion	138

VOLUME IV

TABLE OF CONTENTS

THE AWARD OF DESIGN CONTRACTS: AN OVERVIEW

I.	Introduction	1
II.	Peabody Era	
	A. Introduction	6
	B. Background: Fundraising and Design Contract Awards	8
	C. The Boiler Room: Squeezing Money Out of a Stone	9
	D. Simple Favoritism: How Design Contracts were Awarded	12
	E. Design Legacy of Simple Favoritism	18
	F. Conclusion	19
III.	Volpe Era	
	A. Before the Establishment of the Designer Selection Board	20
	1. Introduction	20
	2. Frank Masiello	20
	3. Special Senate Committee Investigation	22
	B. After the Establishment of the Designer Selection Board	27
	1. A&F Commissioner John McCarthy	27
	2. A&F Commissioner Anthony DeFalco	29
IV.	Sargent Era	
	A. Introduction	43
	B. Significant Individuals	45
	1. Donald Dwight/Albert Zabriskie	46
	2. Harold Greene	50
	3. Victor Zuchero	56
	4. Governor Sargent	56

C. Architects	60
1. Gourley Correspondence	60
2. Harold Greene Memorandum	63
a. Borek Associates, Inc.	70
b. Samuel Ussia & Associates	72
c. E.J. Flynn Associates, Inc.	73
d. Abraham Woolf & Associates	74
e. Tallman, Drake & Guay	75
f. John Carr Associates	76
g. R. Scott Quinlan	78
h. Healy & Healy Architectural Associates	80
3. Desmond & Lord; Bristol County Jail Contract Award	82
4. Masiello & Associates; Springfield Mental Health Center Contract Award	87
5. Other Architects	89
D. Commissioners of A&F	
1. Charles Shepard	97
2. Robert Yasi	99
3. William Cowin	103
4. David Marchand	106
V. Conclusion	110

DESMOND AND LORD, INC.

<u>Introduction</u>	1
History of the Firm	1
Thissen's Role in the Firm	2
Emphasis on Public Contracts	2
Desmond and Lord's Public Design Contracts	4
Bureau of Building Construction Contracts	5
Fees Paid	5
Designer Selection Board Approval	5
Continued Services Contracts	6
Law Suits	6
Public Instrumentalities	6
 <u>The Selection Process</u>	
Contracts Within the Jurisdiction of the Bureau of Building Construction	8
Prior to the Establishment of the Designer Selection Board	8
Selections by the Designer Selection Board	11
Massport Contracts	18
International Terminal	21
South Terminal	25
South Station Complex	33
 <u>Performance of Design Contracts</u>	37
 <u>Fee Analysis</u>	
Standard Procedures	44
Desmond and Lord Analysis	46
Establishing Complexity	46
Fee Calculations for Large Projects	47
Increased Construction Cost	48

<u>Political Influence</u>	51
Method of Political Contributions	52
Financial Analysis	53
Cash Generation	54
Fiscal Year 1970	56
Fiscal Year 1971	57
Fiscal Year 1972	58
Fiscal Year 1974	59
The April Bonus Checks	60
Checks to Cash	60
Political Contributions in the Name of a Third Person	61
Jane Walsh	61
Mary Maloof	62
Sepp Firnkas	65
Alphonse Mancuso	65
<u>Conclusion</u>	67

Table 1: BBC Projects

Table 2: Massport Projects

VOLUME V

Table of Contents

SUPPLIERS

Introduction	1
The Methods	1
Specifications	1
Nonfiled Sub-bids	4
Filed Sub-bids	5
Allowances	6
Form of Kickbacks	8
Case Studies from Investigations and Testimony	10
Millwork: Ralph Iaccarino and Sons Lumber Co., Inc.	10
The Trade	10
The Firm	10
Scope of Study	11
Investigative Results	11
How the Contracts Were Awarded	11
What Was Given in Return	14
How the Firm Was Able to Pay	15
Examples of the "Rip-off"	17
Hardware: Shawmut Hardware Corporation, Inc.	24
The Trade	24
The Firm	24
Scope of Study	24
Investigative Results	25
How the Contracts Were Awarded	25
What Was Given in Return	29
Landscaping: Arello, Incorporated	32
The Trade	32
The Firm	32
Scope of Study	32
Investigative Results	32
How the Contracts Were Awarded	32
What Was Given in Return	34
Office Furniture: Krizik and Corrigan, Inc., Commonwealth Stationers, Inc.	38
The Trade	38
The Firms	38
Scope of Study	38
Investigative Results	39
How the Contracts Were Awarded	39
What Was Given in Return	44

Security Windows: The William Bayley Company	47
The Trade	47
The Firm	47
Scope of Study	47
Investigative Results	48
How the Contracts Were Awarded	48
What Was Given in Return	49
Brick: Provost Company, Inc.	51
The Firm and Its Trade	51
Investigative Results	51
How the Contracts Were Awarded	52
What Was Given in Return	52
Athletic Equipment: SunLea Sports Company	54
The Firm and Its Trade	54
Investigative Results	54
Conclusion	56
Driscoll Weber	58
The Driscoll Weber Investigation	59
Financial Profile of Driscoll Weber	61
Predominant Supplier of Kitchen Cabinets	61
Process for Awarding Kitchen Cabinet Contracts	62
Driscoll Weber's Record as Kitchen Cabinet Supplier	64
Architects' Use of Driscoll Weber's Specifications	65
Robert Charles Associates	66
Masiello and Associates, Inc.	67
John Carr Associates	68
Reinhardt Associates	68
Influencing the System	69
Cash Generation	69
Payments to Design Firms	71
William Masiello	71
Hugh Quigley of Robert Charles Associates	74
David Murphy	74
Reinhardt Associates	75
Contributions to Employees of the Department of Community Affairs	75
Michael Harrington	75
Richard Skerry	78
Political Contributions	82
Contributions Through Manzi	82
Sylvester Sylvia	83
Conclusion	84
Testing Consultants	86
Introduction	86
Background	86
A Case Study: Success at a Cost	88
Conclusion	93

INFLUENCE EXERCISED ON ADMINISTRATIVE AND LEGISLATIVE ACTION

Neutralizing Supervision	95
Overview of Strategies to Influence Legislators and Neutralize Supervision	95
Specific Means of Buying Access	95
Political Fundraising	95
Related Political Activity	96
Professional Fees	97
Entertainment	98
Travel and Conventions	100
Gifts	100
Sporting Events	101
Free Services and Use of the Firm's Credit	101
The Access That Was Bought	102
Masiello & Associates, Senator James A. Kelly and the Legislative Process	104
What the Masiellos Did For Kelly	104
What Kelly Did in Return	124
Introduction	124
MCI Concord	125
Kelly's Role in Capital Outlay Appropriations	126
The \$4.5 Million Appropriation	127
Kelly Secures Masiello's "Monopoly" over MCI-Concord	127
Kelly's Appropriation Methods	128
Capital Outlay Budget Formation	128
The Chairman's Advantages	129
Access to Other Legislation Action	129
Kelly Introduces Masiello to Important Boston Contacts	130
Masiello as a Go-Between With Kelly	131
Kelly's Blank Receipts Document Cash Generating Checks	132
Kelly Assures Masiello & Associates Contracts	132
Kelly Offers Masiello Money to Leave the State	133
The J. A. Sullivan Corporation and the BBC	135
Contractor Selection at Salem State College	135
Payments to Frederick J. Kussman	136
October 10, 1973 Check	136
1974-1976 Consulting Services Checks	140
Performance as a Contractor	143
Salem State College	143
SMU Fine Arts Building	147
Cash Generation	152
Political Contributions	152
Checks Deposited or Cashed by Barbara Manning	154
Manning Checks Charged to Bidding Expenses	156
Mel Daniel's Check Voucher	159
Conclusions	159

LAUNDERING IMPROPER CAMPAIGN CONTRIBUTIONS

Introduction	163
The DMJM Story	163
What the Commission Found in Manzi's Bank Account	164
How the Commission Found What It Was Looking For	165
Procedures for the Commission's Audit	166
Guaranty Bank and Trust Company Accounts 4-336-7011 and 4-338-1359	166
Bank Procedures Followed in Retrieving Information	167
Other Sources of Information	168
Sargent Reception Committee Treasurer Paul A. Hogan's Role under Manzi	168
Sargent Committee Records	169
Boston Globe Article	169
Findings of the Commission's Audit	170
Tracing the California Cashier's Checks	170
California Cashier's Checks Deposited on September 14, 1971	171
Sargent Reception Committee Deposit on September 14, 1971	171
Contributors	171
Probable Source of the Cashier's Checks	173
California Cashier's Checks Deposited on February 7, 1972	173
Sargent Reception Committee Deposit on February 7, 1972	173
Contributors	174
California Cashier's Checks Deposited on March 30, 1972	174
Sargent Reception Committee Deposit on March 30, 1972	175
Contributors	175
May 2, 1972 Deposit	178
Contributors	178
Other Unidentified Contributions	178
Unidentified Cashier's Checks	178
Undeposited Cash Contributions	180
Conclusion	181

CASH GENERATION AND CASE STUDIES

<u>Introduction</u>	183
<u>Cash Generation Case Studies</u>	185
An Architect with a Local Monopoly	185
An Architect's Relationship with a County	186
Another Architectural Firm	188
A Former Mayor Hired by an Architect as a "Consultant"	189
An Engineering Firm	190
A Major Engineering Consultant to Architects Under Investigation	192
A General Contractor's Petty Cash Fund	194
Another Construction Company	196
A Family of Companies	198
Other Cash Generation Techniques	199
<u>Conclusions</u>	203

VOLUME VI

CONSTRUCTION DEFECTS
STATE AND COUNTY BUILDINGS

Table of Contents

Introduction	2
Summary of State and County Building Construction: 1963 - 1979	7
Physical Condition of State and County Buildings Constructed from 1968-79	10
Questionnaire Survey Procedures	10
Analysis of Questionnaire Responses	11
Technical Investigations and Inspections	15
Analysis of Technical Investigative Results	16
Building Defects by Category	19
Systemic Defects Observed in Technical Investigations	21
Building Defects and Filed Subcontractors	24
Review of Contract Time Data	26
Evidence of Fraud from Technical Investigations	26
Estimated Construction Costs to Repair Defective Work	28
Case Studies	30
BBC Administered Contracts	
Cape Cod Community College	32
Salem State College: Library Building	42
Boston State College: Tower Building	47
Southeastern Massachusetts University: Physical Education Building	54
Bridgewater State College: Athletic Fields	58
University of Massachusetts/Amherst: Library	66
University of Massachusetts/Amherst: Tillson Farm Power Plant	80
University of Massachusetts/Boston: Columbia Point Campus	94
University of Massachusetts/Worcester	105
Pondville Hospital	120
Haverhill Parking Deck	124
Worcester County Jail	130
Hingham District Court House	138
Independent Building Authority Administered Contracts	
University of Massachusetts Building Authority	144
Department of Community Affairs Administered Contracts	
Melrose Housing Authority: McCarthy Apartments	152
Duxbury Housing Authority: Duxborough Village	172
Randolph Housing Authority: Housing for the Elderly	175

VOLUME VII

Table of Contents

SYSTEMS ISSUES AND FINDINGS:

THE SYSTEM OF PUBLIC CONSTRUCTION IN MASSACHUSETTS:
AN ANALYSIS OF AREAS OF CORRUPTION AND MALADMINISTRATION,
WITH RECOMMENDATIONS FOR IMPROVEMENT
(beginning)

<u>INTRODUCTION</u>	3
Description of the Sections Which Follow	6
<u>THE SCOPE AND NATURE OF THE COMMONWEALTH'S CAPITAL INVESTMENT PROGRAM</u>	8
<u>The Commonwealth's Capital Investment Program In the Past</u>	8
Distribution Among State Agencies	9
Distribution Among Counties	10
Building Authorities	10
Division of School Facilities	11
The Department of Community Affairs	11
Other Agencies	11
<u>Future Building Programs</u>	13
<u>FORMAL ORGANIZATION AND PROCESSES</u>	19
<u>Organization of the Commonwealth</u>	19
<u>Organization of Project Planning and Management</u>	27
Agency Structure	27
Normal Capital Outlay Process	28
Department of Community Affairs	30
MHFA	31
Division of School Facilities and Related Services	32
Higher Education Building Authorities	34
<u>CAPITAL PLANNING AND BUDGET</u>	36
<u>Introduction</u>	36

<u>The Formal System of Capital Outlay</u>	36
Agency Requests	36
Administration and Finance (A&F)	37
Bureau of Building Construction Review	38
Governor's Recommendation	39
Submission to the Legislature	39
House Ways and Means Report	40
Senate Consideration	41
Conference Report	42
Governor's Action	42
County Budgetary Process	42
Agency Requests	42
Submission to the State	42
Project Approval	43
<u>Results of Capital Planning</u>	44
<u>General Factors Influencing Capital Planning</u>	55
<u>Specific Systemic Problems in the Capital Planning Process</u>	60
Lack of an Executive Agency Capable of Performing Capital Outlay Review	60
Lack of Resources and Expertise for Long Range Planning	61
Lack of Clear Cut Policy Decisions and Long Range Plans	63
Lack of Resources and Ability to Articulate Needs, Garner Resources and Implement Plans	64
Inability to Assess State Needs in Light of Existing Facilities	66
The Ability of Agencies to Secure Appropriations for Capital Outlay Projects Without Relationship to State-Wide Goals	67
Participation by Legislators Exercising Inordinate Influence During the Agency Deliberation Process	68
A Process for Making Decisions Which Is Often Disorganized, Haphazard, and Irrational	69
A Hasty and Relatively Ill-Informed Review of the Capital Budget by the Legislature	72
The Insertion of Unevaluated Projects into the Budget on the Floor of the Legislature	75
<u>Gubernatorial and Legislative Review of the Main Capital Outlay Budget</u>	79
<u>Solutions to Specific Problems: Legislation Proposed By the Commission and Enacted Into Law</u>	82
Division of Capital Planning and Operations	82
Relationships to the Budget Process and the Operating Budget	82
Internal Structure of the Division	83
Responsibilities of the Deputy Commissioner	84
The Division's Jurisdiction Over Planning	85
Distinction Between Jurisdiction as to Planning and Jurisdiction as to Operations	86
The Content of Long Range Plans	86
Specific and Lump-Sum Requests	88
Budget Requests	88
Resources for Planning	88
Reviews of Plans and Requests	90
Mandated Studies and Programs	93
Phasing of Procurement	95
Other Provisions of the Legislation	97
Reports on Projects	99
Advisory Council	100

<u>REAL PROPERTY MANAGEMENT</u>	102
<u>The Formal System of Real Property Management</u>	102
Information Management	102
Allocation	103
Acquisition	104
Disposition	105
<u>Problems of Real Property Management</u>	105
Introduction	105
The Lack of a Real Property Management "System"	106
Fragmentation of Responsibility	107
Lack of Expertise and Resources	109
Inappropriate Political Considerations	109
Information on Property	110
Allocation	111
Acquisition	115
Disposition	118
<u>Solution to Problems of Real Property Management</u>	119
The Division of Capital Planning and Operations	119
Allocation	121
Acquisition	123
Disposition	125
 <u>PROGRAMMING: INDIVIDUAL PROJECT PLANNING</u>	 128
<u>Results of Inadequate Project Definition</u>	128
Delays	129
Cost Increases	130
Design Failures	131
Abandoned Projects	132
<u>How Programming Should Work</u>	133
The Purpose of Programming	133
Responsibility and Resources for Programming	136
Standards for Programs	137
<u>Solutions</u>	138
Programming in Capital Planning and Budgeting	138
An Office of Programming	140
Programming Consultants	140
Funds for Programming	141
Cost Estimating	141
The Role of the Project Manager	141
 <u>DESIGNER SELECTION</u>	 187
<u>The Formal System of Designer Selection</u>	188
Composition of the Designer Selection Board; Receipt of Applications and Recommendations by the DSB	188
Selection of the Designer by the Commissioner of Administration	139
Non-DSB Designer Selection: Waivers	139
Non-DSB Designer Selection: Continued and Extended Services	190
<u>Patterns of Corruption in Design Contract Awards</u>	190
The Sargent Administration	191
The Volpe Administration	195
The Peabody Administration	196
Local Housing Authorities and Department of Community Affairs	197
<u>What the Evidence Shows: Awards Involving the DSB</u>	198
DSB Operations	198
By-Pass of the DSB	202
A&F Designer Contract Awards	204
Housing Authority Projects	206

<u>The Quality/Corruption Connection</u>	211
<u>An Improved Designer Selection Process</u>	212
Widening Distribution	213
Fee Bidding	214
Fees: the Alternative Views	215
Fee Bidding: Particulars	218
Fee Bidding: the Concept of "Qualified"	224
Fee Bidding: Integrity	227
Fee Bidding: Conclusion	228
<u>Specific Recommendations</u>	229
Models	229
Specific Recommendations	231
Selection	237
DSB Procedures	237
Fees	240
Condition of Awards	241
Jurisdiction	242
DSB Staff	244
DSB Membership	244
Recommendations Regarding Housing Authorities	246
Implementation	249
 <u>DESIGN</u>	 253
<u>The Formal System of Project Design</u>	253
Preparation of the Design Contracts	253
Approval of Consultants	254
Execution of the Contract	254
Initial Project Conference	255
Preparation of Preliminary Plans and Specifications	255
Preparation of Working Plans and Specifications	256
Payments to Designers	256
<u>Problems in the Design System</u>	258
Poor Design Quality	258
Delay	261
Cost Control	263
Fee Arrangements	268
Specifications and Supplier Scams	270
<u>Analysis of Problems</u>	273
Programming	273
Designer Selection	274
Consultants	274
Design Review	275
Design Quality	276
Delay of Design	276
Cost Control	278
Lack of Accountability	279
Lack of Formal Evaluation	280
<u>Solutions</u>	280
Planning, Programming, and Designer Selection	280
Approval of Consultants	281
Project Management	281
Cost	281
Schedule Control	281
Substantive Review	282
Award of Construction Contract	282
Allowances	282

VOLUME VIII

Table of Contents

SYSTEMS ISSUES AND FINDINGS:
THE SYSTEM OF PUBLIC CONSTRUCTION IN MASSACHUSETTS
(conclusion)

<u>CONSTRUCTION BIDDING</u>	284
<u>THE FORMAL SYSTEM OF CONSTRUCTION BIDDING</u>	284
Preparations for Bidding	284
Prevailing Wages	284
Advertising	285
Competitive Bidding on Building Contracts	285
Plans and Specifications	286
Filing of Sub-bids	286
General Bids	287
Selection of the General Contractor	288
<u>SUBCONTRACTOR SELECTION</u>	289
<u>The Evidence</u>	289
Introduction	289
The Quality of Sub-Contractors' Work	290
The Evaluation of Sub-Contractors' Work and Its Effect on Contract Awards	292
Sub-bidding Improproprieties: Shopping, Peddling and Rigging	297
Bid Shopping	297
A State Prison	302
A Community College	304
A State College	304
A School for the Retarded	306
Bid Rigging	306
MCI Concord Project P61-1 #4	303
MCI Concord Project P61-1 #9A	309
MCI Concord Project P61-1 #9C	309
Worcester County Jail	309
Administration	312
Restrictive Effects of Filed Sub-bidding on Design: Architectural Technology	316
Accessibility to "New" Sub-Contractors	319
Cost of Construction	323
<u>What the Evidence Shows</u>	329
Quality	329
Integrity	329
Administration	330
Accessibility	330
Cost	331
<u>A New Sub-Contractor Selection System</u>	331
Quality of Work	332
Cost	332
Administration	332
Integrity	332
Accessibility	333
Alternatives	333
Recommendations	341

<u>CONTRACTOR QUALIFICATIONS</u>	343
<u>Introduction</u>	343
<u>Legislative Solutions and Suggestions for Implementation</u>	347
Prequalification	347
Debarment	352
<u>IMPROPER USE OF ALTERNATES AND UNIT PRICES</u>	355
<u>Alternates</u>	355
Discussion of the Problem	355
Legislative Solution	356
<u>Unit Prices</u>	357
Discussion of the Problem	357
Proposed Solutions	358
<u>ACCESS TO PUBLIC CONTRACTS</u>	360
<u>Contracting Opportunities for Minority and Women-Owned Businesses</u>	360
Introduction	360
Federal Government	363
Problems with the Bureau of Building Construction	365
Legislative Solutions and Suggestions for Implementation	366
Certification of Minority and Women-Owned Businesses	368
Enforcement	368
Ability to Waive the Set-Aside Requirement in	
Cases of Hardship	369
Central Register Listing Contracting Opportunities	369
The Legislation	369
Background of the Legislation	370
<u>PROJECT MANAGEMENT</u>	372
<u>Introduction</u>	372
<u>The Formal System of Project Management</u>	372
Execution of the Contract	372
Construction Phase	373
The Clerk-of-the-Works	374
Change Orders	375
Certificate of Use and Occupancy	375
Certificate of Substantial Completion	375
Certificate of Final Inspection, Release and Acceptance	375
Payments to the General Contractor	376
Payments to the Sub-Contractors	376
<u>Problems in Project Management</u>	377
Construction Supervision on BBC Projects	377
The Role of the Designer	378
The Clerk-of-the-Works	379
The Role of the BBC Project Engineers and Inspectors	380
Construction Supervision on DCA Projects	381
Case Studies of Inadequate Project Management	381
Cape Cod Community College	382
McCarthy Apartments	383
<u>Cost Controls</u>	383
Statistics on Cost Overruns	383
Concealed Overruns	384
Failure to Monitor Change Orders	385
Pricing of Change Orders	386
Approvals of Change Orders	387
Other Sources of Financial Waste	387
Costs Due to Delay	387
Fraud as a Source of Cost Overruns	388

<u>Delay</u>	389
Delay on SBC Projects	389
Failure to Penalize Contractors for Delay	390
Delay Caused by Change Order Process	391
Delay Caused by Construction Disputes	392
<u>Legislative Solutions and Suggestions for Implementation</u>	393
Construction Supervision	393
Project Managers	393
Resident Engineers	394
Implications of the New Legislation	395
Elimination of Waiver of Jurisdiction	396
Cost Control	396
Cost Estimating	396
Change Orders	397
Authority to Order Changes	397
Constructive Changes in the Work	399
Pricing of Change Orders	399
Unchanged Work -- Consequential Work	401
Time Control	402
Recommended Contractual Provisions	402
Dispute Resolution	402
<u>BUILDING MAINTENANCE AND REPAIR</u>	406
<u>Introduction</u>	406
<u>Problems of Maintenance and Repair</u>	406
Maintenance Operations	406
Repair Operations	407
Funding	408
Maintenance and Repair Personnel	411
Results of Poor Maintenance and Repair	412
Maintenance and Repair of the Government Center	414
Energy Conservation	416
<u>Solutions to Maintenance and Repair Problems</u>	417
<u>RECORD KEEPING</u>	422
<u>Introduction</u>	422
<u>Problems in Record Keeping</u>	424
The Comptroller	424
The Bureau of Building Construction	424
Record Keeping Criteria	424
Maintenance of Files	425
Contract Documents	426
Record Storage	427
Using Agencies	427
Other Administrating Agencies	428
Private Vendors	429
<u>The Framework of Responsibility for Record Keeping</u>	430
Those Keeping and Using Records	430
Supervision of Record Keeping and Standards	432
The Nature and Cause of Record Keeping Problems	432
<u>Solutions</u>	433
The Records of Public Agencies	433
Recommendations Concerning Private Vendors	436
<u>RECOMMENDED BUDGET</u>	439
<u>The Division of Capital Planning and Operations:</u>	
<u>Cost Analysis</u>	439

CAMPAIGN FINANCE

<u>Introduction</u>	2
I. FINDINGS ON THE EFFECT OF PRIVATE MONEY ON GOVERNMENT DECISION-MAKING	3
A. <u>Summary of Findings from Specific Investigations</u>	3
Policies Concerning Disposition of Contracts	5
Quid Pro Quo Agreements	6
Fundraising Activities as Means of Exercising Influence	7
Influence in Areas other than Contract Awards	7
B. <u>Summary of Conclusions from the Commission's Review of Campaign Finance Reports</u>	8
C. <u>Analysis of Data from Commission's Review of Campaign Fundraising Reports</u>	9
Introduction	9
Campaign Fundraising: Non-Election Year	10
The Importance of Raising Large Single Contributions	14
Impact of Special Interest Groups: Aggregate Contributions	15
Large Single Contributions	15
Influential Legislators	15
Special Interest Groups Not Reporting as a Political Committee	20
II. FINDINGS ON THE FAILURE OF THE EXISTING SYSTEM TO ENFORCE CAMPAIGN FINANCE LAWS	22
A. <u>Violations of Provisions for Reporting Contributions</u>	22
Concealed Corporate Contributions	22
Inadequacy of Existing Disclosure Reports	23
B. <u>Role of the Office of Campaign and Political Finance</u>	23
Deficiencies of the Office as a Record Keeping Agency	24
Failure of the Office to Perform Auditing and Investigative Functions	25
Failure of the Office to Perform its Advisory Role	26
Lack of Accountability of Office	27
III. SUMMARY OF RECOMMENDATIONS FOR RESTRICTING LARGE CAMPAIGN CONTRIBUTIONS AND PARTIAL PUBLIC FINANCING OF POLITICAL CAMPAIGNS	27
<u>Analysis of Effectiveness of Improved System of Public Financing of Campaigns</u>	29
Principal Findings	29
Analysis Supporting Principal Findings	29
Fiscally Responsible Proposal	30
Adequate Funding	30
Sufficient Monies from the Tax Check-Off	32
Triggering Mechanism: Making the Public Financing Proposal Fiscally Sound	32
Special Provisions for 1982, 1984, and 1986	33
Other Elements of an Effective Public Financing System	33



IV. SUMMARY OF RECOMMENDATIONS FOR DEALING WITH REPORTING, DISCLOSURE AND ENFORCEMENT	34
A. <u>Proposals Concerning Campaign and Political Finance Commission</u>	34
Campaign and Political Finance Commission	35
Investigative Responsibilities	36
Penalties	36
Annual Reporting	36
B. <u>Proposals for Improved Record Keeping and Reporting</u>	36
Retention of Records	37
Reports by Legislative Candidates	37
Reports by Persons Doing Business with Public Agencies	37
Definition of Political Committees	38
Permissible Campaign Expenditures	38
 <u>SUPPLEMENT A: DETAILED SUMMARY OF CAMPAIGN CONTRIBUTIONS TO AND EXPENDITURES BY CANDIDATES FOR STATEWIDE OFFICES IN 1978 AND CALCULATION OF EFFECTS OF PROPOSED PUBLIC FINANCE SYSTEM ON CONTRIBUTIONS TO CANDIDATES FOR STATEWIDE OFFICES</u>	 39
Election for Governor	41
Election for Lieutenant Governor	44
Election for Attorney General	47
Election for Secretary of the Commonwealth	50
Election for Treasurer	54
Election for Auditor	58
 <u>SUPPLEMENT B: CALCULATION OF EFFECTS OF PROPOSED PUBLIC FINANCE SYSTEM ON CONTRIBUTIONS TO CANDIDATES FOR LEGISLATIVE OFFICES</u>	 61
1978 State Representative Election	62
1978 State Senate Election	63
1978 State Representative Election: Democrats	64
Republicans	66
Independents	68
Qualifying Candidates for 1978 Election for State Representative	70
1978 State Senate Election: Democrats	71
Republicans	73
Independents	75
Qualifying Candidates for 1978 Election for State Senate	77
 <u>SUPPLEMENT C: DETAILED DESCRIPTION OF TRIGGERING MECHANISM</u>	 78
 <u>SUPPLEMENT D: 1978 GENERAL ELECTION FOR THE HOUSE OF REPRESENTATIVES: OUTCOME BY MONEY SPENT</u>	 83



DETECTING AND PREVENTING FRAUD

THE OFFICE OF INSPECTOR GENERAL	35
Introduction	36
Problems in Detection and Prevention	36
Limitations on the Role of the State Auditor	36
Limitations in Prosecutors' Roles	37
Solutions	38
The Federal Model	88
Key Characteristics	89
Recommendations and Legislation	91
Jurisdiction	92
Independence	92
Subpoena Powers	93
Referrals	95
ENFORCEMENT STATUTES	95
The Need for New Laws	95
The New Statutes	96
False Statements	96
Economic Extortion	96

PILOTING THE LEGISLATION

ORGANIZATION: DEVELOPING AND DRAFTING LEGISLATIVE PROPOSALS -- PRESENTING A CASE TO THE GENERAL COURT	100
ASSUMPTIONS AND GOALS	100
Legislative Action	100
Timing a Legislative Campaign	101
Active or Passive Agent	102
DEVELOPMENT OF PROPOSALS AS A POLITICAL PROCESS	103
The Basics: Getting Information and Help	103
Planning Backward and Forming Coalition	104
Timing a Compromise	106
Drafting Completeness and Accuracy	107

THE LEGISLATIVE PROCESS	108
Leadership Structure	108
Ritual	109
Rumors	109
Sponsorship	109
The Written and Spoken Work in the Legislature	110
Identifying the Votes	111
Dividing the Work	112
Cards and Letters	112
Staff Back-Up	112
Committee Mark-Up	113
FLOOR ACTION	114
Roll Call Votes	114
Timetable	115
Honey or Vinegar	116
Conference Committee	117
Third Reading	117
The Governor's Signature	118
Prospects for 1981	118
NEWS MEDIA	119
One Voice	119
Press Secretary	120
Timing	120
Monitoring News Coverage	121
Forms of News Issuance	121
The Interview	122
The Press Conference	123
The Background Story	123
Leaks	123
Public Hearings	124
Information Provided	126
The Final Report	126
Performance of the Media	127
THE SPECIAL COMMISSION IN COURT	
WARD v. PEABODY	133
PUBLIC HEARINGS: KELLY, THISSEN, DOE and GREENE	138
Ward v. Kelly; Ward v. Thissen	138
Doe v. Ward	141
In the Matter of Harold Greene	142
Daniel J. Burke	143
OTHER CASES	145
David B. Coletti	145
Impounded Cases	146
Ward v. Manzi	147
CONCLUSION	148

VOLUME IX

THE COMMISSION'S NARRATIVE

Introduction	1
Events Leading to Proposals for a Commission	1
December Appeal	2
Calls for a Commission	4
Commission Bill Filed	6
Hearing Date Set	8
Judiciary Committee Hearing	10
The Curtin Memo	13
Commission Bill to House Floor and Passed	15
Senate Passes Bill: Governor Signs	16
Constitution of the Commission	19
Commission Constituted	22
First Interim Report	23
Commission Faces Delays	24
Assembling Data on State Contracts	27
Investigations Initiated	29
Commission Evaluates Investigative Alternatives	32
Consideration of the Budget	35
Revisions to the Commission's Enabling Resolve	36
Approval of Provisions	39
The Struggle for the Budget and the Amendments	41
The Interim Report	43
The Commission Submits an Application for a Federal Grant	44
Meeting with Governor King	46
Manzi/Masiello Trial	48
The Federal Grant	49
The State Budget	49
Agreement with the Governor	55
Amendments to the Resolve	57
Discussion of Hearings	58
The Systems Reform Program	59

More Budget Delays	60
Governor Recommends Funds	62
Plans for Reform	62
Budget Problems Loom Again	63
Debate of the Proposed Amendments	65
Amendments Approved By House	66
Amendments Passed: Sent to the Governor	70
Executive Message to the Legislature	71
Amendment Rejected: Governor Signs	74
Back to Business: Development of Proposals	75
Preparations for Filing	77
Investigative Methods	78
Campaign Law and Campaign Finance Reform	84
The Filing	86
Committee Consideration	88
Further Campaign Research	90
The Administration Committee Hearing and the Debate Whether to Debate	92
The Public Hearings	97
Campaign Bill Drafting Begins	100
Administration Committee Work on the Legislation	101
DiCarlo Appears in Public Hearing	103
Legislation Moves Slowly	106
Public Perception of the Hearings	107
Harold Greene Challenges Commission Subpoena	109
Still No Commitment on the Legislation	111
Campaign Reform Bill Filed	113
Calls For Action on Bills	114
Decision to Request Extension of the Commission	117
Meeting With Legislative Black Caucus	118
Testimony on the Inspector General Concept	120
Mark Up of Inspector General Bill	122
Testimony of William V. Masiello	124
Extension/Inspector General Voted Out	128
From Ways and Means To Prorogation	129
Resolution Not To Prorogue	130

\$300 Million Repair Estimate	131
Ways and Means Hearing on Inspector General	133
MacKenzie Testifies	133
Manzi to Testify	134
Peabody Ordered to Comply	136
Testimony on Defective Buildings	137
Compromise and Conflict on the Inspector General Bill	138
Greene to Charles Street Jail	140
Calls for Admission of Campaign Bill	141
Inspector General Passes the House	142
Greene Appears Before Public Hearing	143
Campaign Bill Admitted	143
Construction Reform Reaches the Floor	146
Commission Meets With Leadership	147
Election Laws Hearing on Campaign Bill	148
Prorogation	152
House Passes Construction Bill	153
Committee Work on Campaign Bill	154
Senate Passes Construction Bill	155
Conference Committee on the Inspector General	155
Conference on Construction Reform	158
Bills to the Governor's Desk After Surreptitious Alterations	161
Bribery Bill to King	162
House Votes Down Campaign Reform	163
Coletti Challenges the Commission	165
King Signs Commercial Bribery and Construction Bills	165
The Final Months	166
The Final Report	166
Referrals	172
Conflict of Interest Laws of Massachusetts	173
Campaign Finance Laws of the Commonwealth	174
Perjury	175
Federal Hobbs Act	175
Federal Mail Fraud	176
Other Relevant Criminal Statutes of the Commonwealth	176

Ongoing Investigations	177
Legislation	177
Events in Court	178
Inspector General Appointment Deadlocked	180
Legislation for Consideration in 1981	180
Coletti	180
Campaign Report	180
Final Report	180
Financial History of the Special Commission	181
Staff Photograph	184

SEPARATE VIEW

Separate View of Commissioner and Attorney General Francis X. Bellotti	186
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VOLUME X

FOOTNOTES FOR VOLUMES III, IV, V, VI, and IX

Volume III	Findings in Individual Cases: Award of Design Contracts	2
	A New Campus for Holyoke Community College	3
	Masiello	10
Volume IV	The Award of Design Contracts: An Overview	34
	Administration & Finance	35
	Desmond & Lord	62
Volume V	Suppliers	
	Suppliers	71
	Driscoll Weber	79
	Testing Consultants	86
	Influence Exercised on Administrative and Legislative Action	88
	Neutralizing Supervision	88
	Masiello & Associates, Senator James A. Kelly, and the Legislative Process	90
	The J. A. Sullivan Corporation and the BBC	102
	Laundering Improper Campaign Contributions	105
Volume VI	Construction Defects, State and County Buildings	108
	Introduction	109
	Cape Cod Community College	115
	Salem State College Library	117
	Southeastern Massachusetts University	118
	Bridgewater State College	120
	Boston State College	122
	University of Massachusetts/Amherst Library	123
	Tillson Farm Power Plant	127
	University of Massachusetts/Boston, Columbia Point	130
	University of Massachusetts/Worcester	131
	Pondville Hospital	135
	Haverhill Parking Garage	137
	Worcester County Jail	138
	Hingham District Courthouse	140
	University of Massachusetts Building Authority	141
	McCarthy Apartments, Melrose	143
	Randolph Housing for the Elderly	146
Volume IX	The Commission's Narrative	148

VOLUME XI

DOCUMENTARY APPENDICES
TO VOLUMES II, III, IV, V, AND VI

MBM Investigation

Masiello: If a Hand Is Open

The Award of Design Contracts: an Overview
Suppliers

Driscoll Weber

The J. A. Sullivan Corporation and the BBC

Laundering Improper Campaign Contributions

Construction Defects: State and County Buildings

Cape Cod Community College

Salem State College: Library Building

Boston State College: Tower Building

Southeastern Massachusetts University: Physical Education Building

Bridgewater State College: Athletic Fields

University of Massachusetts/Amherst: Library

University of Massachusetts/Amherst: Tillson Farm Power Plant

Pondville Hospital

Worcester County Jail

Hingham District Court House

University of Massachusetts Building Authority

Melrose Housing Authority: McCarthy Apartments

Randolph Housing Authority: Housing for the Elderly

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Because of cost considerations, Volume XI has not been reproduced in multiple copies. It is, however, available for inspection at the Office of the Clerk of the House of Representatives.



VOLUME XII

FOOTNOTES AND APPENDICES:

THE SYSTEM OF PUBLIC CONSTRUCTION IN MASSACHUSETTS

CAMPAIGN FINANCE

THE SPECIAL COMMISSION IN COURT

Table of Contents

FOOTNOTES:

THE SYSTEM OF PUBLIC CONSTRUCTION IN MASSACHUSETTS

Introduction	1
The Scope and Nature of the Commonwealth's Capital Investment Program	1
Formal Organization and Processes	1
Capital Planning and Budget	1
Results of Capital Planning	2
Specific Systemic Problems in the Capital Planning Process	2
Solutions to Specific Problems	4
Reviews of Plans and Requests	5
Real Property Management	7
Programming	8
Designer Selection	9
Design	13
Construction Bidding	14
Contractor Qualifications	17
Access to Public Contracts	19
Project Management	19
Maintenance and Repair	22
Record Keeping	23

<u>CAMPAIGN FINANCE</u>	25
-------------------------	----

<u>THE SPECIAL COMMISSION IN COURT</u>	26
--	----

APPENDICES TO VOLUMES 7 and 8:

Appendix to Designer Selection:

- Distribution of Work Among Designers, Department of Community Affairs, Elderly Housing Projects, 1968-1979. 29

Appendix to Subcontractor Selection:

- Report of the General Services Administration Advisory Panel on Subcontractor Listing, December 1977. 33
- Data from the Massachusetts Department of Public Works on the Cost of Filed Sub-bid Projects. 40
- Letter from Joseph M. Corwin to President Jimmy Carter, On Behalf of the American Subcontractors of Massachusetts, June 23, 1977. 48
- Recommended Legislation, "Construction Accountability Act." 49

Appendix to Contractor Qualifications:

- "Contractor Performance Evaluation," New Jersey Division of Building Construction. 56

Appendix to Access to Public Contracts:

- "Minority Business Certification Application," Massachusetts Department of Commerce and Development, State Office of Minority Business Assistance. 62
- "Rules, Regulations, Procedures and Criteria Governing the Certification and Decertification of Minority Business Enterprises," Massachusetts State Office of Minority Business Assistance. 81

Appendix to Recommended Budget:

- Comparison of Cost of Commission Proposal for Division of Capital Planning and Operations and Current and Projected Costs of Existing System. 93

Appendix to Campaign Finance:

- Section by Section Summary of Campaign Finance Bill. 107
- Recommended Campaign Finance Legislation: "An Act to Further Regulate the Reporting and Disclosure of Campaign Contributions and Expenditures and to Provide for Partial Public Financing of the Political Campaigns of Certain Candidates for Public Office." 115

Appendix to Enforcement:

- Recommended Legislation: "An Act to Increase the Political Independence of the Office of Inspector General." 168

Appendix to Systems Issues and Findings:

Additional Recommended Legislation

- "An Act Affecting the Powers and Duties of the Inspector General." 170
- "An Act to Clarify the Powers and Duties of Certain State Officers." 173
- "An Act to Improve Capital Outlay Budget Planning." 179
- "An Act Relating to the Status of Certain Personnel." 181
- "An Act Clarifying Section 67A of Chapter 266 of the General Laws." 185

MEMBERS OF THE SPECIAL COMMISSION
CONCERNING STATE AND COUNTY BUILDINGS



FRANCIS X. BELLOTTI

Francis X. Bellotti was first elected to the Office of Attorney General of the Commonwealth of Massachusetts in November of 1974. He has continued in that position, gaining re-election in 1978 by the highest plurality in the history of the State. His administration has been characterized by his aggressive prosecution of arson in Suffolk County, state tax evaders and fraudulent Medicaid providers. The Attorney General's Public Protection Bureau has promulgated regulations concerning debt collection and used car sales, while actively enforcing the State's consumer protection laws. Mr. Bellotti previously held the office of Lieutenant Governor of Massachusetts from 1963 to 1964.

A graduate of Boston English High School and Tufts University, Frank Bellotti served as a Lieutenant J.G. during World War II. After completing his tour of duty, he studied at Boston College Law School, earning his degree in 1952. Thereafter, Bellotti became one of the State's outstanding trial attorneys. He gained the respect of his clients and the legal community, authoring numerous articles and lecturing on trial preparation and tactics.

Bellotti currently serves as the Chairman of the Criminal History Systems Board, the Committee on Criminal Justice, the Organized Crime Control Council and the Committee on Privacy and Consumer Rights.

Bellotti lives in Quincy with his wife Margarita and their twelve children.



FRANCES BURKE

Frances Burke was chosen by the Secretary of State to fill the position on the Special Commission Concerning State and County Buildings reserved for a person who has never served in the Legislature. She is a Professor at Suffolk University School of Management.

Burke received her Ph.D. from Boston University in 1974, and has taught at Boston University, Metropolitan College, Stonehill College and Tufts University. She has for many years also worked as a management consultant to business, industry and government.

Burke has served in various appointed and elected capacities within her field. She is a trustee of Southeastern Massachusetts University in Dartmouth, Council member of Pi Alpha Alpha of the National Association of Schools of Public Affairs and Administration, and was recently appointed to Project 87, a national interdisciplinary research group preparing for the Bicentennial of the Constitution. Burke is also an active member of the American Society for Public Administration, the American Political Science Association, the Association of State and Local Management Analysts, and the Policy Studies Organization.

In 1977, Burke received the "President's Award" from the Massachusetts Chapter, American Society for Public Administration. She also had received, in 1975, the Public Citizen Award from ASPA for distinguished service to the Commonwealth and the region.



PETER FORBES

Peter Forbes, American Institute of Architects (AIA), was appointed to the Special Commission as the architect member by State Auditor Thaddeus Buczko. Forbes is the president of the architectural firm of Peter Forbes and Associates. In accordance with the dictates of the enabling legislation, Forbes and his firm have engaged in no state or county work, and work almost exclusively in the private sector.

Forbes' experience is both as practitioner and theorist. He is head of a design firm actively engaged in projects in many parts of the country and was recently the recipient of the "Young Professionals Award" presented annually by Building Design & Construction magazine.

He has also been a lecturer in Design, Theory and History at Harvard University Graduate School of Design, the Boston Architectural Center, the University of Virginia, Darden School of Business Administration, Yale University and the University of Michigan. He was a participant and consultant to the United Nations Conference on Human Settlements, Vancouver, 1976.

Forbes graduated from Phillips Exeter Academy, Exeter, New Hampshire, the University of Michigan (Bachelor of Architecture) and Yale University (Master of Architecture). He is a member of the American Institute of Architects, the Boston Society of Architects, and is life member in the Society of Architectural Historians.

He holds the Certificate of the National Council of Architectural Registration Boards, and is a registered architect in the Commonwealth of Massachusetts and additionally in Maine, Rhode Island, New York, Virginia, Michigan, Nevada, and California.

Forbes is an enthusiastic amateur athlete, actively sailing and competing in every known racquet sport from squash to the arcane game of Court Tennis.



DANIEL O. MAHONEY

Daniel O. Mahoney of Marblehead was appointed to the Commission by the Governor upon nomination by the President-Elect of the Massachusetts Bar Association. He is a senior partner in the Boston firm of Palmer and Dodge.

Mahoney has been engaged in the general practice of law with Palmer and Dodge for 27 years except for his period of military service. His practice has been principally in the trial of civil cases and in the fields of insurance and health care law. He graduated from Williams College in 1950 and from Harvard Law School in 1953. He served as First Lieutenant and Captain, Judge Advocate General Corps, United States Army Reserve from 1954 through 1957.

Mahoney is a member of the Massachusetts and American Bar Associations and a fellow of the Massachusetts Bar Foundation. He is Treasurer of the Massachusetts Bar Association, Chairman of the Budget and Finance Committee, and a member of the Executive Committee and Board of Delegates. Mahoney is Trustee and Vice President of the Salem Hospital, Trustee and President of the Tower School in Marblehead, and member of the Executive Committee and former President of the Williams College Alumni Association of Boston.

Mahoney has served for many years as Secretary and General Counsel to Blue Shield of Massachusetts, Inc. He has been interested in the development of prepaid legal services plans and is the principal draftsman of the Massachusetts statute governing such plans, Chapter 1764 of the General Laws enacted in 1977. He is married to Nancy Miller Mahoney and has four children.



WALTER J. McCARTHY

Walter J. McCarthy was appointed to the Special Commission as the engineer member by State Auditor Thaddeus Buczko. Since 1973, he has been Professor of Civil Engineering at Southeastern Massachusetts University in North Dartmouth. In that capacity, he guided the implementation of the first program in Construction Management Engineering in the eastern United States. In 1978 fellow faculty members honored him with the Sullivan Award as the University's outstanding teacher.

McCarthy graduated from the Massachusetts Institute of Technology with a B.S. in Civil Engineering and from Northeastern University with an M.S. in Engineering Management. He is a registered professional engineer in the Commonwealth of Massachusetts and the State of New York.

He began his career as a field engineer on the construction of MDC sewer tunnels, served as a design and office engineer on the construction of a reactor development facility, and was employed as a construction engineer for a public utility and as chief engineer for a construction materials manufacturer. He then served as a construction management consultant for Harbridge House, Inc. where he specialized in construction procurement and the development and implementation of planning, scheduling, and control systems for major facilities construction.

In 1968 he became President of George Madsen Construction Company of Minneapolis. He later also founded and became President of Management and Construction Services Corp. These firms assumed a leadership role in the implementation of modern construction management concepts on complex projects and pioneered fast-track construction and the use of the computer as a construction management tool.

He is a member of the Massachusetts Society of Professional Engineers and the American Institute of Constructors. He is married to the former Janet Ohrenberger, has three children and resides in Scituate.



JOHN WILLIAM WARD

John William Ward was named Chairman of the Commission by the Governor of Massachusetts in May 1978. Mr. Ward had been President of Amherst College until June 30, 1979 when he announced his resignation. Before becoming President of the College, Mr. Ward had been a Professor of History and American Studies at Amherst College. He came to the Faculty of Amherst College in 1964 from Princeton University where he had been Chairman of the Special Program in American Civilization and a professor in the Department of History.

Mr. Ward has twice (1958, 1968) been a John Simon Guggenheim Memorial Fellow and was in 1963 a Fellow of the Center for Advanced Study in the Behavioral Sciences at Stanford. In 1968, he was Fulbright Lecturer in U.S. History at the University of Reading, England. In 1970, he was selected as Phi Beta Kappa Distinguished Lecturer to visit several American college campuses. Just before his election as President of Amherst College in 1971, Mr. Ward was named the William R. Kenan, Jr. Professor, an honor conferred upon "a scholar-teacher of distinction whose enthusiasm for learning, commitment to teaching, and interest in students will make a notable contribution to the undergraduate community."

Mr. Ward is an historian, the author of books and many articles on American intellectual and cultural history. His books are Andrew Jackson: Symbol for an Age (Oxford, 1955) and Red, White and Blue: Men, Books, and Ideas in American Culture (Oxford, 1969). He edited, for the John Harvard Library of the Harvard University Press, Frederick Grimke, The Nature and Tendency of Free Institutions (1968), and was co-editor of an eight-volume series, "Documents in American Civilization" (Anchor Books). He has written introductions to many books and published more than forty articles in such journals as The American Scholar, American Quarterly, The Yale Review. He has written book reviews for scholarly journals and also for The New York Review of Books, The New York Times and The



Washington Post.

Mr. Ward was born in Boston, December 21, 1922. He attended the Boston Latin School where he was captain of the football team. He went to Harvard College which he left at the end of his freshman year to enlist in the United States Marine Corps (1942-1946). As an enlisted Marine, he became corporal, was later commissioned, served as an officer of the Marine Detachment aboard the flagship of the Atlantic Fleet, the USS Augusta, and was discharged after the war as a first lieutenant.

After graduation from Harvard in 1947 as a member of the Class of 1945, Mr. Ward earned his M.A. and Ph.D. degrees from the University of Minnesota. From 1952 to 1963, he taught at Princeton University where he was first Professor of English, then Professor of History and Chairman of the Special Program in American Civilization. Mr. Ward is a member of the American Historical Association and the American Studies Association. He is also a Councilor for the American Antiquarian Society.



LEWIS WEINSTEIN

Lewis H. Weinstein was appointed to the Commission by the Secretary of State. He is senior partner in the Boston law firm of Foley, Hoag & Eliot, having been graduated from Harvard College (where he taught mathematics) in 1927, and Harvard Law School in 1930.

Weinstein taught Trial Advocacy at Harvard Law School for sixteen years and the Law of Land Use and Planning at MIT for eight years. He has also lectured at many other institutions, such as the New England and Practicing Law Institutes and the National Institute of Trial Advocacy in Boulder, Colorado.

Of his three and a half years in the military service, he was overseas for almost three years and, after landing in Normandy, was General Eisenhower's Liaison Officer to General DeGaulle, and later Chief of the Liaison Section of the European Theatre of Operations. He was awarded the French Legion of Honor and the Croix de Guerre with palm, the Legion of Merit, and other citations.

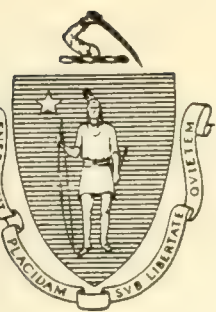
His legal career included four years as Assistant Corporation Counsel for the

City of Boston under his late partner, Henry E. Foley, where he worked on cases claiming refunds of kickbacks by former Mayor James M. Curley and secret profits by his City Treasurer, Edmund Dolan. In the former - after a radio appeal - Curley repaid the City more than \$85,000, and Dolan's surety company repaid the City about \$180,000. His legal career has included not only substantial litigation, but he was an active advocate in the fields of urban renewal, local taxation (especially of utility, industrial and commercial properties), eminent domain, utility rate cases and construction litigation (including that brought by the Associated General Contractors when he was its general counsel).

Weinstein has been a member of a number of legislative and administrative commissions (including the State Commission on Desegregation in Public Schools), and others dealing with anti-discrimination legislation in housing, employment and education. He has served as counsel for the Massachusetts League of Women Voters, as well as numerous national, industrial and commercial firms, banks, insurance companies and individuals. He was chairman of the State Emergency Housing Commission, wrote the first Massachusetts "snob zoning" and urban legislation, and also served as chairman of the State Board of Housing and Massachusetts Housing Council.

He served as the law head of the major Jewish national "umbrella" organizations: the Conference of Presidents of Major American Jewish Organizations, the National Jewish Community Relations Advisory Council, the Council of Jewish Federations, and the National Conference of Soviet Jewry, and in Boston, among many others, as president of the Hebrew College, Combined Jewish Philanthropies and Jewish Community Council.

Weinstein is a Fellow of the American Bar Foundation and the American College of Trial Lawyers, and a member of the American Law Institute.



The Commonwealth of Massachusetts

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 FRANCIS LITTLEFIELD, JR.
 (Chief Counsel)

December 31, 1980

ACKNOWLEDGMENTS

In any complex investigation, extending over more than two years and eight months, innumerable people must give their help and support if an investigation is to be a success. One of the most heartening things about the work of the Special Commission Concerning State and County Buildings has been the ready willingness of so many to assist the Commission. We truly cannot remember a single instance when the Commission asked for help and was refused.

There are dangers in acknowledging the help of particular individuals and organizations. First, one may imply that the contributions of some people are more important than others. The work of the Special Commission was truly a collective enterprise. Each contributed to the work of the whole, from the firm but friendly Capitol Police who maintained strict decorum at public hearings, to Dr. An Wang who provided from his corporation, pro bono, word-processing equipment and service. Second, one may forget someone inadvertently, and cause hard feelings. Third, in the sheer length of the catalogue of names of those to whom one owes so much, one's thanks may come to seem pro forma, simply conventional. Not so. The Commission owes much to many. Its

only regret is that it is physically impossible to thank each individual directly and personally.

The Commissioners recognized from the start that the single most important decision they would make over the entire life of the Commission was the selection of the Chief Counsel. The best measure of thanks the Commissioners can pay Bancroft ("Nick") Littlefield, Esq., is to say that it was not only the most important decision, it was the best decision the Commission made.

With Chief Counsel the Commission recruited the finest legal and investigative and research staff which has been put together in the history of the Commonwealth. The attorneys who served over the life of the Commission as Deputy Chief Counsel were the first staff members hired after Chief Counsel, and provided remarkable service in all stages of the Commission's work. They are: Thomas E. Dwyer, Richard McCarthy, John Pappalardo, Michael Tabak and Michael Tracy and Associate Counsel Natalea Skvir. Working together, to be sure, the Commission's staff were organized into two main groups, an investigative unit and a legislative unit, in accord with the Commission's mandate to investigate corruption and to make legislative recommendations for the future. Each unit required different skills; both were superb:

Lawyers on Investigations:

Thomas E. Dwyer, Executive Director and Deputy Chief Counsel, Richard McCarthy, Deputy Chief Counsel, John Pappalardo, Deputy Chief Counsel, Michael Tabak, Deputy Chief Counsel, Michael Tracy, Deputy Chief Counsel, Natalea Skvir, Associate Counsel, Investigations, Barbara Milman, Associate Counsel, Systems and Investigations, Susan Beck, Associate Counsel, Investigations, Jeffrey Auerhahn, Associate Counsel, Investigations, John Brophy, Associate Counsel, Investigations, David O'Connor, Associate Counsel, Investigations.

Lawyers on Legislation:

Jonathan Bockian, Associate Counsel, Systems, Larry Beeferman, Associate Counsel, Systems, Jane Alper, Associate Counsel, Systems, Terry Mond, Associate Counsel, Systems and Investigations.

Behind the legal staff lay the heart of the organization: CPA's, former IRS and FBI investigators, those who reconstructed what happened and followed the tortuous trail of paper which finally made the investigations concrete and particular and so compelling.

Richard Krant, Chief Investigator, Robert McAuliffe, Senior Financial Investigator, Charles McNally, Senior Financial Investigator, James O'Neill, Senior Financial Investigator, Richard Reale, Senior Financial Investigator, Harold Smith, Senior Financial Investigator, Charles Audette, Financial Investigator, Howard Dacey, Investigator (assigned by Boston Police Department), Joseph Dempsey, Financial Investigator, James Deveney, Technical Consultant, Al Hoban, State Police Investigator, Bill Horgan, State Police Investigator, Robert Jubinville, State Police Investigator, Edward Kelly, Investigator, George Landry, Investigator, Timothy Leonard, Financial Investigator, Jerome McCallum, Investigator, Robert Melley, Financial Investigator, Robert Patenaude, Investigator (assigned by Metropolitan District Commission), Grace Pan, Financial Investigator, James Siracusa, Financial Investigator, Patrick Ward, Investigator (assigned by Secretary of the Commonwealth), Gary Burns, State Police Investigator, John Connors, Financial Investigator, John Woollett, Technical Consultant.

Then, the paralegals and editors.

Christine Aposhian, Legal Assistant, Final Report, Dean Askin, Legal Assistant, Systems, Alison Bell, Legal Assistant, Investigations, Nancy Brigham, Editor, Final Report, Dirk Buikema, Legal Assistant, Investigations, Eric Bryant, Legal Assistant, Investigations, Barbara Buck, Writer/Editor, Final Report, Donald Burnham, Legal Assistant, Final Report, Thomas Curley, Legal Assistant, Investigations, Jane Current, Writer/Editor, Final Report, Mark Demorest, Legal Assistant, Investigations, Nancy Dolberg, Legal Assistant, Systems, Andrew deMars, Legal Assistant, Investigations, Betty Krier, Legal Assistant, Final Report, Mary Lewis, Legal Assistant, Peter Mitchell, Legal Assistant, Investigations, Julie Marston, Legal Assistant, Final Report, Jeffrey Oliver, Legal Assistant, Investigations, Robert Richardson, Legal

Assistant, Investigations, Richard Read, Legislative Aide, Campaign Reform, Final Report, Randall Short, Legal Assistant, Investigations, Thomas Neely, Investigator, Gilbert White, Legal Assistant, Investigations, Bill Cohn, Production Manager, Final Report, Marcia Fernald, Editor, Final Report, Ann McCabe, Legal Assistant, Peter Vitale, Legal Assistant (assigned by Attorney General), Joseph Zelan, Editor, Final Report.

Within the Commission, also were the administrators, secretaries and receptionists who, by some miracle, were able to keep their sanity and their humor under the unrelenting demands placed upon them by a staff always under the pressure of some new deadline.

Rachel Lapointe, Personnel Officer, Lea Snow, Financial Administrator, Phyllis Boffitto, Administrative Secretary, Nancy Earsy, Administrative Director, Donna DeBenedictis, Administrative Assistant, Roberta Longley, Office Manager, Denise Milroy, Executive Secretary, Diane Sousa, Legal Secretary, Eunice Donnelly, Secretary, John Damtoft, Systems Manager, Leslie Fields, Word Processing Supervisor, Maxine LaFosse, Secretary, Gregory Lippolis, Manager Information Systems, Myra Ten Huisen, Receptionist, Shirley Thomas, Secretary, Mona Tucker, Secretary, Claudia Buser, Word Processor, James McGill, Word Processor, Marjolyn Nieuwkerk, Word Processor, James Poku, Word Processor, Martha Savio, Programmer, Ana Rosa Torres, Word Processor, Frances Vinyard, Typist.

Beyond the Commission's own staff, a myriad of groups, ranging from representatives from state agencies to ad hoc volunteer groups around a particular issue, were of immense help:

Full and Part-Time Auditors Assigned to The Special
Commission From the Office of State Auditor
Thaddeus Buczko

James Allen, Richard Antennucci, Ann Bobbitt, Sal Camuglia, Albert Carnevale, Alfred Castantini, George Cordima, Tia Jenkins, Daniel Keeler, Karen Kelleher, James Kevin Lambert, Vinh Luong, Frank Luzinski, John Maguire, Walter Martin, William Newell, John Shaughnessy, Joseph Shea, Lauri Stein

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Public Construction Procurement Systems Resource Group

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 Urs Gauchat, Architect, Associate Prof. Architecture, Harvard School of Design
 Edgar Gilbert, Engineer, Senior Project Manager, Arthur D. Little, Inc.
 John Kennedy, Engineer, Construction Mgr., Walsh Bros., Inc.
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 Mayer Spivack, Director, Unit of Environmental Analysis & Design, Harvard Medical School

Campaign Resource Group

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 Exec. Office of Admin. & Finance
 John vonSchlegell, Executive Office of Human
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 Stephen Weiner, Chief Engineer, Mass Port Authority
 Dr. Albert Whitaker, Director, Archives Division, State
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 Pres., Bonfatti Construction Co.
 Philip Mitchell, Rep., Construction Industries of Mass.
 Leo Reed, Exec. Secretary, Bldg. Trade Employees Assn.
 Douglas Cole Smith, Representative, Mass. State Assoc. of
 Architects

Committee of the Massachusetts State Association of Architects
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 Arthur G. Telegen, Marc Temin
 Palmer & Dodge, Russ V. V. Bradley, Jr., Gaylen D. Kemp

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 Philip Mitchell, Rep., Construction Industries of Mass.
 Leo Reed, Exec. Secretary, Bldg. Trade Employees Assn.
 Douglas Cole Smith, Representative, Mass. State Assoc. of
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Div. of Buildings & Construction, Joseph Febo, Prequalification
Officer, NJ Div. of Buildings & Construction, Ruth Paven,
General Counsel, Department of Labor & Industries, Ann McDonough,
MBTA Contract Administration Division, Richard Friburger, Mgr.
of Project Planning, Harvard Univ., Robert Thomas, Mgr. of
Construction Mgt., Harvard Univ., Harold Goyette, Director
of Planning Office, Harvard Univ., Dan Schodek, Annie Howitt,
Roger McLeod, Dir., Public Sector Div., Mass Commission
Against Discrimination, Herbert Singleton, Equal Opportunity
Officer, Bureau of Bldg. Construction, Russel J. Kennedy,
Captain James Ford, Neil Jansens, Les Brown, Louis Perry,
Clara Freedlender, William Marren, UMass Amherst, Foster
Jacobs, SMU, Robert Pyne, Dept. of Community Affairs,
Marshall Simonds, Former General Counsel, Mass. Crime
Commission, Goodwin, Procter & Hoar, Boston, Mass., Pat
Mathiason, Common Cause, Polly Jackson, League of Women Voters
Albert Anderson, Mass Action, Violet Sieder, Mass Human
Services Coalition, Paul Cruz, Cruz Construction, Robert
McKay, Citizens Housing & Planning Association, Archibald Cox,
Jack Dady, Jr., Mass Society of Professional Engineers,
Carl Sapers, Hill & Barlow, representing MSAA, James Meyers,
Gadsby & Hannah, Ken Mosakowski, S.C.E.R.A., Evan Johnston,
S.C.E.R.A., Philip Perlmutter, Jewish Community Council,
Randy Komisar, Federal Trade Commission

Systems Hearings Witnesses

Louis Porzio, BBC, James Welch, BBC, James Cusack, BBC, Joseph
Glynn, BBC, Harry Spence, Gelardin-Bruner-Cott, Inc., Joseph
Kane, Esq., BHA, Barbara Manford, DCA, Stephen Demos, Chief

Systems Hearings Witnesses (continued)

Architect, DCA, Foster Jacobs, Dir. Physical Plant, South-eastern Massachusetts University, John Kennedy, Walsh Bros., Inc., Robert Sheehan, Comptroller, Edgar Gilbert, Arthur D. Little, William Murphy, Vice President, New England Mutual Life, David L. Flynn, Board of Trustees of State Colleges, Sumner Abrams, Mayer Spivack, Julius Abrams, Joan Belle Isle, Bernard Schreiber, David Carlson, Architect, John Larkin Thompson, President, Blue Shield of Massachusetts, Inc., William Porter, Dean, MIT School of Architecture, John T. Kenny, CCE, R. S. Means Co., Inc., Robert Ciolek, Peter Gavrilles, Stanley Lupkin, New York City Commissioner of Investigations, Kurt Muellenberg, GSA Inspector General, Virginia Enos, Sydney Construction Co., Inc., Helen Moreschi, Susan Brophy, Women in Construction Project, John F. Dacey, Jr., Executive Director, Mass Society of Professional Engineers

Finally, it is fitting we end with young people, student volunteers, students on work-study grants, student interns, and paralegals who volunteered their time; fitting because they represent the future. If the next generation has the enthusiasm, the interest in public service, and the capacity for hard work these young people showed, then there is hope for the future.

Volunteers/Work Study Students, StudentInterns and Volunteer Paralegals

Amherst College

Bill Snedeker

Bentley College

Dino Livolsi, Jeremiah Donovan, Mark Flionis, Michael O'Neil

Boston College

Michael Bodson, Chris Cooper, Caryn Dlott, Rosemary Traini, Peter Albert, Mary Ellen Amsler, Samuel Betar, Joseph Bongiorno, Nora Bottino, Edward Coleman, Curt Devlin, Mark Duzenski, Michael Fleishman, Robyn Frye, Jill Griesing, Harold Gorach, James Guerra, Christopher Hart, William Kickman, Thomas McGuire, Adel Mrusek, Alison Mitchell, Patricia Murphy, Mark Murphy, Michael Neuberger, Tracy Ryan, Anthony Scola, Nancy Stoddard, John O'Neill, Robert Shea, Antonia Tobin, Michael Lawlor, Gretchen Condon, Cynthia Atkins, Michael Bell, William Delaney, Stacy Hamilton, Cheryl Kune

Boston College Law School

Alice Kossoff, Sharon Lindley, George Mykulak, Christine Pendry, Linda Sanderson, Steven Wright, Andrew Alpert, John McGivney, Ruth Kaplan, Louise Gessel, James Dalberg, Richard Convicer, Michael Cohen

Boston State

Patricia Noyes, Francine Salinger

Boston University

Mark Selko, Norby Zamora, Derek Young, Gregory Wysocki,
Joseph Whalen, Joan Wisniewski, Mark Winston, Herlis Robert
Tillman, Mark Spencer, Marie Skinnion, Gene Shwalb, Robert
Stone, John Roback, Merle Pine, Marie Paratore, Carolyn Oliver,
Patricia O'Byrne, Stephen Montgomery, Charles Lukasik, Michael
Lorigan, Michael Long, Darren Lindsey, Donna Jaszewski, Michael
Hultquist, Susan Gyss, Jane Farrissey, Mary Eng, Jeffrey Davis,
Mark Curry, John Cassidy, David Brodsky, Robert Acquaro, Linda
Chin, Ivar Leetma, Leigh Savidge, Terrence Burns, Libby
Boucher, Stephen Ferszt, Steven Ng, Karen Fitzgerald

Boston University Law School

Mary Kathleen Yuscavage Clay, Ed Weiner, Gerri Sperling, John
Ryan, Mark Reibman, Mark Goidell, Joseph Devlin, Stacey Cannon,
Steven Adler

Brown University

Annette Eng

Columbia University

Irene Haase

Harvard College

Doris Balaconis, Robert Culbertson, Jeff Smith, Mark Tawater,
Susan Blanc, Tom Miett, Corlis Jean Chan, William Garcia,
Steven Bleiber, Jeffrey Blattner, Karrye Braxton, Howard
Bromberg, John Caragozian, Ellen Collins, Danny Ertel, John
Garvey, John Gennari, Felecia Green, Kevin Henderson, Kevin
Johnson, Maximino Medina, Kevin McFarren, Nancy Page, Andrea
Present, Kevin Roberts, Emily Rothrock, George Scholomite,
Stuart Smith, Mark Tremallo, Barbara Watson

Harvard Law School

Merril Hirsh, Tim O'Shaughnessy, Daniel Pinkston

Harvard School of Design

Frederick Biehle, Ann Bardeen, Michael Carter, Charles Carlin,
William Scott Clark, Stephen Douglass, Deborah Fennick, Henry
Fernandez, Charles Hanton, Gary Haney, Lorens Holm, Gary
Johnson, Konrad Kwok, Maureen Melville, John Meder, Joseph
Navarro, Ann Pitt, Ronnette Riley, Amy Semmes, Lynne Thom,
Steven Van Ness, Arthur Vogt, Paul Zemtozov

Massachusetts Institute of Technology

Janet Grzywacz, Frederick Smith, Daniel Packer

New England School of Law

Mark Goldrosen, Michael Wise, Patricia Norton, Peter Nadel,
Georgianna McLoughlin, Joseph Maccarone, John Kenney, Linda
Gavin, John Fitzgerald, Robert Filteau, Catherine Stenger,
Melody Edwardson, Bill Cupelo, Colleen Brown, Domenical
Bizzocco, Paul Barrett, Larry Beckenstein

Northeastern University

Douglas Williams, Mark Sattelberger, Stan Tolczko, Jim Bigelo,
Loming Chan, Jerry Gruenbaum, Thomas Keller, Helena Long,
Theodore Siggins

Northeastern University Law School

Cherly Brown

Simmons College

Monica Managami, Becky Houkel

Suffolk University

Francis Earley, Joseph Green, Gina Tucker, Charles Ajemian,
Gary Serino, Deidra Kulevich, Greg Riley, Patrick Aiello,
Carla Braxton, Michael Lataille, John Damtoft, Fletcher Bishop,
Mary McNeil

Suffolk Law School

Loretta Collins Tremblay, Joseph Rocha, Linda Poulos, Malka Grinkorn, Charles Floyd, David Darwin, Timothy Dreher, Donald Crawford, Lisa Cosentino, Marie Capelotti, Eileen Anderson, David Doyle, Richard Connors

University of Massachusetts

Robert McClelland, William Tagg, Robert Bennett, Dennis Walsh, Michael Stokes, Robert Hastry, Jay Gerbis, Grace D'Avalio, Linda Schofield

Wellesley College

Darlene Vale, Theresa Chin, Linda Seamons, Kathy Shandling, Pamela DeGaff

Wheaton College

Elizabeth Pope

Yale University

Jonathan Khan

Others

Vivian Hilborn, Elaine Zetes, Kerry Sulkowicz, Paula McDonald, Patricia Steel, Brian Fern, Pat Leach, Barbara Holt, Roger Read, Claudia Shape, Mark Warner, Jane Reinhart, Pamela Trimble, Sharon Howell, Ellen Keefe, Ken Vitagliano, Candice Ahearn, Sandra Baldwin, Valerie Robinson, Noreen McHugh

What We Have Learned:

The Costs of Corruption

On April 12, 1978, the Governor of the Commonwealth of Massachusetts signed into law Chapter 5 of the Resolves of 1978, which created a special commission to investigate allegations of corruption in the award of state and county building contracts, and to make recommendations for legislative and administrative reform. Two years, eight months and eighteen days later, with the submission of its Final Report to the General Court on December 31, 1980, the Special Commission comes to an end. The Commissioners and their Staff are not, by definition, the ones to judge the worth of the Commission's work. We are the ones, though, to say we are proud of what we have done, proud enough to believe we have served the legislature and the people of the Commonwealth of Massachusetts well. Deeper than our pride is our belief that the end of the Commission is only a beginning, only one step on the road to an honest and decent public life in the Commonwealth of Massachusetts.

We have learned much from the experience of the Commission, but the single, over-riding thing we have learned is the need for confidence by the citizens of Massachusetts in the conduct of their government. The depth of skepticism, sometimes to the point of outright cynicism, about elected and appointed public officials should be disturbing to private citizens, not just to the politicians. It is a measure of the alienation of people from government and of the erosion of the will to act as citizens.

To restore general confidence in public life means constant

and unceasing attention to the particulars of public life, not grand pronouncements about the general good and civic virtue. The Final Report of the Special Commission is an ambitious report, a massive, detailed, narrative and critical history of the Commission's work which runs to several volumes and thousands of pages. Few will read it, and those few will probably read those chapters and sections in which they have a special interest. The Commission knows that. We are not naive. But neither did we believe that lofty general observations about the Commission's work would have much weight without the ballast of a detailed, empirical account of the particulars. To put it another way, we wished to leave behind a record, in the full, historical sense of that word, of the particulars of our work.

The particulars are set, however, in a general design:

- I. First, what have we learned?
- II. Second, what have we proposed to do on the basis of what we have learned?
- III. Third, what do the first two say about politics and about the future?

I

In the award of design contracts for the construction of state and county buildings, we have learned that —

- o Corruption is a way of life in the Commonwealth of Massachusetts
- o Political influence, not professional performance, is the prime criterion in doing business with the state
- o Shoddy work and debased standards are the norm
- o The "system" of administration is inchoate and inferior

CORRUPTION AS A WAY OF LIFE

The final report of the Commission tells in detail a sad and sordid story. The story is not told with the glee of the muck-raker. It is told soberly and factually. No member of the Commission takes pleasure in the telling. The legislature mandated the Commission to report on its findings, and we have. The purpose of the Report is to cause the legislature, and the general public to whom the legislature and the Commission are in the last analysis responsible, to take thought, to ask how our public life may be made better, be carried on in such a way that it may be possible to be proud to be a citizen of the Commonwealth of Massachusetts.

The particular facts of the Commission's long investigation comprise a general pattern: In the award of contracts for the construction of state and county buildings, corruption has been a way of life. For a decade at least, across Republican and

Democratic administrations alike, the way to get architectural contracts was to buy them. It was not a matter of few crooks, some bad apples which spoiled the lot. The pattern is too broad and pervasive for that easy excuse. There are, to be sure, honest and hard-working administrators in state agencies, underpaid at best, struggling to do their work well. There are earnest and diligent legislators laboring against the inertia of disbelief that politics can be an honorable calling. In numerical terms, such people are the majority in public life. But at those crucial points where money and power come together, the system has been rotten.

The name of the game is cash. The work of the Special Commission offers a classic example of the investigation of white collar crime and political corruption. When bribes are paid or money is extorted, and the two are opposite sides of a single coin and hard to distinguish, there has to be cash. Ways to generate it are legion: "bonus" checks to employees who negotiate them and return the cash; false invoices from suppliers which appear as a deductible business expense even while the dollars come back; honoraria for consulting services never performed; fictional business entities through which money is channelled. Behind every hearing by the Commission lies a tortuous trail of paper which requires skilled financial investigators to follow, by painstaking research, the reconstruction of a firm's records, the examination of bank records, the scrutiny of rolls of microfilm.

What the Commission learned was the simple fact about

human nature that people are not intrinsically good or evil, but that circumstances make them so. One grows into a way of life, becomes acculturated to it, as the anthropologist would put it. It is not a case of black and white. Individuals learn the customs of the country. One engineering consultant to architects told the Commission how it happens. At first, he was asked to buy a few tickets to a fund-raising event at fifty dollars each, a perfectly legal campaign contribution, so long as the money came from him and not the corporation. Then as business grew, the requests grew: a table for ten at a hundred dollars a piece, a thousand dollars. Then the moment came when he was asked for his thousand dollars in cash, not check. The consultant knew that was illegal, but he rationalized his responsibility away by saying it was on the other fellow's conscience since he had told him it was a political "contribution."

At that point, he had crossed the line. He had broken the law. When the next contract came up, he was told flatly he had to pay a 10% kickback on the gross price. For this particular engineer, that was too far. He refused. Never again did he receive a contract on state work.

But too many crossed that line and stayed on the other side of it. Too many thought it was clever, the wise thing to do. So, over time, there grew a fraternity of businessmen and politicians and public officials who, to their mutual profit, congratulated each other on how smart they were. Expense accounts, gifts, credit cards, vacations, trips to the Superbowl: These were the low roads to high liv-

ing. One bribe-giver described the pattern as the "cultivation" of people in positions of power, people who could influence an award of a contract or add to the capital outlay budget so their work would continue.

Perhaps the most revealing thing in the Commission's hearings, private and public, was that witnesses who were part of this way of life still could not bring themselves to use the word "bribe" or "payoff." Constantly, euphemisms such as "contribution" or one's "commitment" to an agreement were the words chosen. Only when a Commissioner would bluntly ask, you mean a bribe, a payoff, don't you?, would there be reluctant assent.

But to understand is not to forgive all. Bribes were given. Extortion was done. The public trust was betrayed. Among those who had money and the influence to strike the bargain, the state was for sale.

POLITICAL INFLUENCE IN DOING BUSINESS WITH THE STATE

Beyond direct bribery and outright extortion, beyond illegal campaign contributions and crooked generation of cash by corporations, there is the close link between money and contracts through "legal" campaign contributions. The legality is purely technical. The way money is raised to run political campaigns is a mixture, depending on which side of the contribution you stand, of genteel extortion or discreet bribery. The practices are the same whether one is a Republican or a Democrat.

One fund-raiser, who rationalized the process with great skill and effectiveness, described for the Commission with some

pride his method. A list is made of those who do business with the state: architects for design services, contractors for construction, engineers for consulting services, lawyers who may wish to be considered for judicial appointment. One can take a walk through the Yellow Pages to make up the list. An individual receives a call that the Governor would like to meet him. The innocent feels a flush of pride; the practiced feel for their pocket-book. The appointment is at a suite of three rooms in a Boston hotel. The outer room is a large waiting-room where one discovers one's peers and fellow-practitioners in uncomfortable numbers; in the second room sits the Governor, usually making up time over soup and a sandwich; the audience lasts no more than two or three minutes. In the third room is the fund-raiser who, with records at hand, reminds the individual of work done in the past, of profits received on state work, and suggests the time has come to help the Governor and the party by a maximum contribution. In this particular scenario, one cannot even apologize for a shortage of money, a cash-flow problem, as businessmen put it, because there is also in the room a stack of sixty- or ninety-day bank loan forms ready for a signature if things are tight or if you have forgotten your checkbook.

What is not said is what is important. No one is so bald as to suggest if you do not contribute you will not do business with the state in the future: that would constitute extortion. No donor is so rude as to extract a promise for state work in the future: that would be bribery. Instead, there is the tacit understanding between public servants and private professionals

that this is how business is done in Massachusetts. A tough lawyer might argue that a certain state of mind exists which implies felonious conduct, but one doubts there are prosecutors who would want to argue the case in Massachusetts.

The Governor who played his part in this little scene later justified the process in public testimony before the Commission by characterizing those who made large contributions to his election as public-spirited citizens who made politics possible! That was a Democratic Governor. The chief fund-raiser of the Republican party told one successful and later notorious architect, "Your involvement in obtaining additional work from this administration will be directly in relation to the amount of money you can contribute and the amount of money you raise for fund-raising activities whenever I request it of you."

Under another administration, a more subtle, less blatant relationship existed between campaign contributions and the award of contracts because of the existence of the Designer Selection Board which, as a professional body, recommended three architects to the Secretary of Administration and Finance. The Designer Selection Board was, unknowingly, easily manipulated. Once the list of three went forward, it was checked by the patronage officer and the chief fund-raiser against lists of contributors, "friends" of the Administration. Anyone who had not contributed was assigned for solicitation. Then, the letter from the Designer Selection Board was walked by a high member of the Administration who, with a check or a dot, would indicate who was to receive the contract before the letter was delivered, fi-

nally, to the Secretary of Administration and Finance who had the statutory responsibility to make the selection.

With splended irony, a member of the Commission's staff wrote that "a process based on political contributions and bribery is none the less a process, and it apparently served the Commonwealth for over a decade, if not considerably longer." The process degrades both the public official and the contributor. The test becomes whether one pays, not whether one can do the best job. Over time, political influence, not professional performance, comes to be taken for granted as the criterion for doing state work. The insidious effect, finally, is to lose sight of standards altogether and to accept shoddy performance because that is the way business is done in Massachusetts.

SHODDY WORK AND DEBASED STANDARDS

There was a moment during the life of the Special Commission when, in his office, the Speaker of the House, Mr. Thomas W. McGee, said, with angry puzzlement, to the Chairman of the Special Commission, "Let's allow the guy got the contract because of favoritism. Let's even allow the guy got the contract because he paid a bribe to get it. But he did get the contract! Why can't he build a building which stands up, a building which works?"

One answer to the Speaker's cross question is that when businessmen, in this instance architects and contractors, believe that to do business with the state means they must buy a contract through bribes or payoffs, or even generous campaign contributions on demand, the better of them will refuse to enter the system and will not do business with the state. The widespread

perception that the system is corrupt will, like Gresham' Law, drive the good players out of the game. A related answer is that those who pay tribute, whether through payoffs or required contributions, will cynically make their money back many times over by inferior work. To the degree the system is corrupt, to the degree political preference is the major avenue of access to the system, then to that degree professional standards of performance will decline and the motive of plunder take their place.

Of all the costs of corruption, the erosion of standards of performance and an easy tolerance of the shoddy and the meretricious are, literally as well as figuratively, the most costly. There are two ways to show their presence and their effect: one is by anecdote, the other, by statistics.

The anecdote concerns a former Secretary of Administration and Finance, charged with the selection of design firms from a list sent forward to him by, at that time, the Bureau of Building Construction. The list, though, first had to be cleared with the Administration's and the Governor's chief fund-raiser. Presumably, all the firms listed were qualified to do the job, but if a "friend" of the Administration who was interested in the contract was not on the list, it would be sent back with a question whether that particular firm was not also qualified. When the list was finally determined, the chief patronage officer would indicate which firm should receive the award of contract. As the Secretary of Administration and Finance testified, speaking directly to the Chairman of the Special Commission, "If I can . . . use the term which was in one of your presentations

to the legislature which I thought fit our situation precisely, you said simple favoritism, and I think that is what we tried to do."

Then, under questioning by a member of the Commission, a professional architect, who asked if it were not presumptuous to select architects for buildings in which people live and work as "bonuses for a political contribution," the Secretary responded, "Well. . . most of the state work can be designed by a competent but not outstanding designer. . . What you want is somebody who is competent to do the job and you just don't have time to search all over the Commonwealth to get the best you can."

The particular Secretary of Administration and Finance was, as the saying goes, an honorable man. But it is not just that he could rationalize the award of contracts to political contributors on the grounds that he was choosing among qualified firms, but more tellingly he did not think excellence should prevail in public work anyway. Ordinary competence is all that state work requires.

What the Commission learned was that one major consequence of corruption and political favoritism was an insidious erosion of standards and the acceptance of work in the public sector which would not be tolerated in the private sector, and should not be tolerated in public buildings. The miserable record of public construction in the Commonwealth of Massachusetts is a measure of contempt for the public realm and a failure to remember the root meaning of the "Commonwealth," the shared common life of all citizens of the state which should be ruled by the highest

standards, and symbolized, especially in its architecture, by excellence.

Cold statistics tell the same story. Since January 1, 1968, the Commonwealth through its several agencies appropriated more than seventeen billion dollars, including debt service, for construction projects, an enormous sum which does not include money spent by cities and towns. The Commission did a study under the direction of a professor of architecture from the Harvard School of Design of public buildings in Massachusetts. The results stagger belief. In the sample of buildings which we examined, seventy-six percent have significant defects, that is, "a structural flaw that threatens the safety of building and results from incompetent design or inferior construction." Major construction projects under the supervision of the Bureau of Buildings Construction show a failure rate of 72%, that is, have areas which are unusable because of errors in design. Since 1968, over a billion dollars have been wasted because of unnecessary delays in design and construction, and fifty million dollars have been spent on plans and designs for buildings which were never built. The estimated cost to the Commonwealth to repair present defects in all public buildings is more than two billion dollars.

Beneath the numbers and behind the anecdotes, though, are human beings, the people whose daily lives are affected: students in libraries and dormitories and on playing fields, old people in homes for the elderly, office workers, and many more, let alone all citizens who through their taxes have paid for shoddy and inferior work.

THE "SYSTEM" OF ADMINISTRATION

The management of the state's important business is so primitive that one uses the word "system" only in the loosest sense of the word. With a professional and persistent staff, the Special Commission at the end of its work is not yet confident it has identified all the construction contracts the state has executed through its myriad agencies. The Chairman of the Special Commission, at a hearing before the joint House and Senate Committee on State Administration, challenged that Committee to find out such elementary information as how many buildings the state owned or leased.

The essential information for effective administration is simply not there in the Commonwealth of Massachusetts. When the Commission began its work, it went naturally to the Comptroller's office since he pays all invoices for the procurement of goods and services on the assumption it could, through that office's files, discover all contracts. Not so. The Comptroller's office had many building contracts, but not all. More importantly, the historical record on each contract, that is, change orders, further appropriations, disbursements against the contract, were kept on separate cards in pencil by two diligent women who were proud of their files.

From that moment, the Commission had an inkling of the staggering task it had in hand. Ultimately, the Commission had to reconstruct the universe it was charged to investigate. The Commission had to assemble from a wide variety of sources the data

on more than 1,400 building contracts so that it could bring some rational criteria to bear upon an examination of them. One of the heartening aspects of the Commission's work was the generous and ready assistance it had, pro bono, from the Massachusetts Institute of Technology and Southeastern Massachusetts University, from Digital Corporation and An Wang Laboratories for computer programming, terminals, and word-processing equipment. Without their splendid help, the Commission could never have done justice to its mandate.

Further, the Special Commission found no system for establishing priorities among competing claims for billions of tax dollars for construction projects, no analysis of needs, no development of plans and programs to allow for cost and time controls over a particular project, no presentation of information which would allow the Governor a comprehensive view of the needs for capital spending or a member of the legislature to vote intelligently on a capital outlay budget. Small wonder that results have been what they have.

An essential need in the Commonwealth of Massachusetts is a management information system which will establish at least the minimal conditions for effective administration. This has nothing to do with corruption, although it is true that the system is so diffuse and incomprehensible that it allows for political manipulation and, to that degree, tolerates corruption. Whether there is a cause and effect relationship can only be a matter of surmise.

II

On the basis of what it has learned, the Commission has made major proposals for legislative change to improve the possibility of effective administration and to enhance the possibility of honest government. Much of that legislation has been enacted. It can be further improved and the Commission has offered amendments to do so. Other legislative recommendations by the Commission still await action. Broadly the bills which the Commission has drafted are aimed at the four areas just described: corruption, political influence, shoddy work, and poor administration.

To draft legislation is an art, a difficult art, and the technical language of a statute does not make for the liveliest prose and the most inspired reading. So, it may be well to describe the general principles of the Commission's legislative intentions and leave the precise particulars to those who wish to pursue them through the pages of the Final Report and the General Laws of the Commonwealth. The Commission's legislation falls into four general areas: the management of the process of public construction; the prevention and detection of fraud, waste, and abuse through an Inspector General's Office; the reform of political campaigns and the provision of public financing for elections; the creation of strong criminal and civil penalties against commercial bribery and false record-keeping.

In the management of public construction, the intention of the Commission is to establish a system which is understandable and, more importantly, a system where responsibility is visible

and clearly located. From the outset, there must be a "program" for a building project, that is, a definition of need, the population to be served, and an assessment of the time and cost of construction. With thoughtful planning, a particular project can be properly placed among the priorities for capital spending so the legislature may know what it is approving and whether the appropriation is adequate. There must be supervision from beginning to end, from preliminary development of a program to evaluation after the fact. Designers must be chosen on the basis of their professional qualifications and reasons must be given why a particular designer is selected. Contractors must be qualified and their work evaluated.

The Commission was successful in enacting a complete reorganization of the system of managing public construction in the Commonwealth of Massachusetts, save in one major area, the provision for filed sub-bids in construction.

Put as simply as possible, the filed sub-bid law works as follows. When a building project is advertised, the construction work is divided into categories reserved for different sub-contractors (masonry, electrical, plumbing, roofing, etc.). The law in Massachusetts creates seventeen categories of building work. The designated categories of work are bid first by the sub-contractors. A week later, the general contractor who, as the name implies, is to have general responsibility for the project, submits his bid, selecting his sub-contractors from those who have previously "filed sub-bids" on the work. The general contractor is not bound, by law, to pick the sub-contractor with

the lowest bid, but to win the contract himself the general contractor must be low bidder. Prudence or common sense will cause the general contractor to take the sub-contractor whose bid is lowest; if he does not, he must make up the difference somewhere else to insure that his own bid is the lowest bid.

The consequence is double. First, the general contractor has no power to put together a construction team which, from his own experience and judgment, he wants to have. Quite the contrary, he must select the lowest filed sub-bids without consideration of quality and performance if he is to be low bidder himself. Second, responsibility for performance on the job becomes diffuse to the point of vanishing. How can the state hold the general contractor responsible when it has restricted, by legislation, his choice of means and techniques? How can the state judge whether a general contractor is qualified to do a job and, at the same time, deny the general contractor the power to select his own team?

Further, the filed sub-bid system and the low-bid requirement for the general contractor combine to maximize the probability that construction work will be poor. The contracts which were bought outright, or awarded as rewards for political contributions, were design contracts. The Commonwealth has an open competitive bidding system for the award of construction contracts. That seems eminently fair. But, unless the state has a way to disqualify general contractors because of previous bad performance, unless it is possible for the general contractor to have real and not nominal power of supervision, and unless responsibility for the work is clearly located, then shoddy work will continue. Price will be the sole criterion for selection of subcontractors

and general contractors, and they will tend to make their profit not on stated price but by shading specifications, substituting inferior material, or by simply coming to believe that public construction is not worth doing well.

Massachusetts is the only state which has the filed sub-bid system. Connecticut has something close to it. But in no one of the other forty-eight states and the Federal Government, and nowhere in the private sector, will one find the filed sub-bid system. But like the mother watching the parade where her son is out of step, maybe everybody else is wrong and Massachusetts is smart enough to employ the best system. The test of that, of course, would be Massachusetts' splendid record in public construction. Other forces are at work, to be sure, but the Commission unanimously and deeply believes the filed sub-bid system is the single greatest obstacle to the quality and the effective management of public construction in Massachusetts.

The Special Commission believes the state should get out of the business of regulating the relations between the general contractor and sub-contractors. As the Commission comes to an end, once again we ask the legislature to abolish filed sub-bids.

To prevent and detect fraud, waste, and abuse in the procurement of goods and services by the Commonwealth of Massachusetts, the Commission proposed and the legislature created last June the Office of the Inspector General. The scope of the Inspector General's power was narrowed by the legislature and, in the Commission's judgment, an unwieldy supervisory council was created to oversee the Inspector General's work. But now, six months later, the Special Commission is more concerned with

the inability of the political system to recruit and appoint a person of integrity and independence to fill that important post.

As a measure of the depth of its concern about the professional stature of the first incumbent, and its frustration at not being able to make an effective transition between the Commission and the new Office of Inspector General, the Commission is filing with its Final Report a bill to change the power of appointment. As the bill stands, three constitutional officers (the Governor, the Attorney General and the State Auditor) must unanimously agree on the person to be appointed. For whatever reason, they have been unable to agree and to act. The Commission proposes that the selection be taken out of the political process and that a majority of the Deans of the several law schools in the Commonwealth of Massachusetts recommend to the Governor for his appointment the person to fill the Office of Inspector General.

The basic concept behind the Office of Inspector General is that any institution, a corporation, a university, let alone the institution of government, must build into itself a mechanism for self-criticism and self-correction. Given the nature of the institution, there are many different ways to do that, of course. To prevent and detect (and the emphasis falls as much upon prevention as detection) fraud and waste in the procurement of the many millions of dollars of goods and services by the Commonwealth, the Commission designed the Office of Inspector General to be a neutral, impartial and independent office to fulfill that critical function.

The legislative intention behind the Office of Inspector

General is good, but it will be the independence and the professional competence of the first incumbent who will set the tone, establish the practices and traditions of the Office and create the precedents which will influence successive Inspectors General. Ideally, the Office of Inspector General could create a future in the political life of Massachusetts where there would never again be the need for a Special Commission to investigate corruption and maladministration. That was the great hope of the Special Commission: to negate the very basis of its own existence.

The bill for campaign reform and the public financing of elections was the one major piece of the Commission's legislative package which was not acted upon by the legislature. The Commission continues to urge its enactment by the legislature because the Commission continues to believe the present method of financing political campaigns is one of the major sources of corruption in the political life of the Commonwealth and the major source for improper political influence. Wherever power and money come together, there will be the possibility of corruption, but if citizens who care about the quality of political life would accept the need for broad-based public financing of elections, that would go far in doing away with the venality of politics as it is currently practiced. If one can give to the local community chest, one can surely designate two dollars each year on one's state income tax form to create a system which frees public servants from their dependence on contributors who want something in return and which frees public servants to serve the public.

Further, the Office of Campaign and Political Finance has been passive and ineffective. The Special Commission proposes

a reorganization of that office with an executive director and legal counsel with an eye toward making it a positive and aggressive force in auditing the receipt and expenditure of funds in political campaigns, and imposing penalties and sanctions on those who do not conform to fair campaign practices.

The unholy alliance between private money and public power is the constant theme all through the Special Commission's investigative work. The only way to break it is to break it. Public financing will not usher in the millenium, but it will change the present rules of the game and encourage greater independence on the part of elected officials and will induce others to enter politics who find the present practices of raising money so personally demeaning.

Finally, the Special Commission learned in its work there are curious lapses and omissions in the laws of the Commonwealth of Massachusetts concerning bribery and extortion and false record-keeping. As the Commission's investigators encountered false statements in applications, false business records, patterns of cash generation, and instances of outright extortion of one business firm by another, they also discovered that many of these nefarious activities are not specifically prohibited by law in Massachusetts, although all are by federal statute. In an important bill which received little notice and which passed with hardly a comment, the Special Commission corrected the legal situation. It may be a small comment on the past that such things seem not to have been of pressing concern in Massachusetts.

III

What of the future? What hopes may one have that political life in Massachusetts will improve?

It is an ancient tradition in American political life that when one discovers a wrong, one passes a law to prevent it. The statute book gets thicker and thicker but public morality seems not to change in equal proportion. The Resolve which created the Special Commission gave it two mandates: first, to investigate corruption and maladministration in the award of contracts for state and county buildings; second, to make recommendations, legislative and administrative, to improve the system by which the state conducts its business. The two mandates are related. Investigation into the past provided better understanding of the system in order to suggest ways to improve performance in the future.

From the outset, the Commissioners and their Staff thought that legislative proposals were the more important part of their work, even though the public was more interested in stories of particular acts of wrong-doing or the dramatic illustration of bad buildings. The Commission thought so because it thought that certain institutional arrangements would favor one kind of conduct over another. That is to say, the Commission does not believe that corruption is a simple matter of human nature, that good people will make bad institutions work, or that bad people will subvert the best institutions. Rather, if one is to make government effective and honest, one must recognize a

dynamic interaction between those in government and the institutional setting in which they act. Politics is not a world of good guys and bad guys, a Manichean world of black and white, but a complex process of ordinary people, by and large, trying to do their work under circumstances which inevitably affect how they do their work. One must work at both dimensions: get good people to become active in politics and make public life an estimable and honorable calling; and, at the same time, design the institutional arrangements of government to attract good people and, more, to make it possible that they can do their work well.

The most dispiriting question which every Commissioner at one time or another confronted was the quizzical remark, "But do you think your work will really make any difference?" The skepticism implicit in that query may be seen in the nature of the Commission itself and in public reaction to its work.

When allegations and rumors about the now notorious MBM contract for the construction of the Boston campus of the University of Massachusetts began to surface, and especially after the conviction of two state senators for extortion, tremendous public pressure arose for a full and complete investigation of that contract, particularly, and state contracts generally. With unanimity in the House and only one dissenting vote in the Senate, the legislature created the Special Commission. The Governor was mandated to select the President of a private college or university, or the Dean of a Law School; other constitutional officers were mandated to select other members of the Commission upon

the recommendation of appropriate professional organizations (for example, the Massachusetts Bar Association), or "lay persons" who had never served in the General Court. The only "political" member was to be the Attorney General.

The constitution of the Commission, i.e., the mode of selection of its members, is a clear expression of a distrust of politics, a lack of trust in the capacity of government itself to be self-critical and self-corrective. So one turns to independent, professional citizens in order to serve the public good, pro bono publico, as the antique phrase has it. The phrase has a freer translation, a more popular meaning: to serve pro bono is also to serve without pay. Skepticism about human nature runs so deep that it includes the motivations of private individuals as well as elected officials.

To put it another way, it was thought that an investigation into fraud and corruption, into white collar crime and malfeasance in public office, would have no credibility with the public unless the body doing the investigation was insulated from the slightest possibility of political motive or personal gain. Further, if the members of the Commission were not to have a personal interest, either political or economic, they were also, as professionals, to exercise their professional and disinterested intelligence in their common pursuit of the public interest, the general good.

If one stands back and considers the state government, one will quickly recognize that all the powers necessary for an in-

vestigation were potentially at hand: a special investigative unit headed by a Captain of the State Police attached to the Governor's Office, the State Auditor, the Attorney General, even the Post Audit Committee of the Legislature which had already made an estimable beginning in the investigation of the MBM contract before the Special Commission came into being. But these powers were brushed aside because they were established political powers. It was the health of politics itself which was at issue in the intense concern that the public trust had been betrayed. The mood which characterized the establishment of the Special Commission was, to put it shortly, cynical.

The mood persists. In June 1980, after public hearings by the Commission and after the enactment of major legislation, a private polling organization sampled public opinion about the Commission. 54% knew nothing or "not very much" about the Commission's work. Of the 46% who knew a "fair amount" (31%) or a "great deal" (15%) about the Commission, 71% thought the Commission had done a good job and that the time and money spent by the Commonwealth was "necessary and useful." Yet, among the very same people who did know the work of the Commission, only one in three thought its work would correct abuses. Almost 60% thought things would go on as they always have and there would be no improvement whatsoever in the future.

The contradiction, between the opinion of 71% who knew about the Commission and thought its work necessary and useful, and the 60% of the same people who thought it would make no difference, is one indication of the deep frustration felt by citizens who

attend to public issues and who care about public life. What can be done about it?

It may come as a surprise to some, since it comes from the Special Commission, but one answer to the question is to say that Special Commissions are not a good way to conduct public life. The existence of a Special Commission symbolizes a pervasive attitude that government does not serve the public good, so a Commission is formed of people outside of government to act as a force against established ways of doing things.

There are other problems, to be sure, with the creation of Special Commissions. Who can afford to serve on them? To satisfy the aroused expectations of the public and carry the heavy responsibility laid upon them? Clearly, only independent professionals with a high degree of control over their own lives and calendars can consider such service. Further, such professionals represent a narrow and select sample of the general population and run the risk of being insulated, by virtue of their own social and economic class, from the very social and economic pressures which it is the business of politics to mediate.

If public life relies upon spasmodic outrage to create Special Commissions to correct the ills of public life, then public life is in dire shape, indeed. That is why the Special Commission created the Office of Inspector General, to build the capacity for self-correction into government itself. But the fate of that piece of legislation raises deep disquiet about the future.

It is not just that the political procedure has not been able to select and appoint an Inspector General, as has already been described, because of a conflict among the triumvirate who must make the appointment. There were two specific and important details which were changed without discussion and without debate in the bill for Inspector General. The first had been hotly contested by the Special Commission with the Leadership in the House, the power of the Inspector General to make referrals to any prosecutorial body, including the U.S. Attorney. The Commission had its way and the power to refer cases to the U.S. Attorney was included. At some point in the final passage of the bill, someone deleted it. Without debate, without formal amendment, someone secretly took a pen and crossed it out. As the bill now stands, the Inspector General is in the preposterous position of not being able to refer a case to a federal prosecutor when he knows a federal law has been violated. It happens to be a crime not to refer evidence of a federal crime to federal authorities. The Great and General Court of the Commonwealth of Massachusetts has created a high office in state government which forbids the incumbent to do that. The other change made by the legislature, again without discussion, is blatantly self-protective: the subpoena power of the Inspector General does not run to the records of a legislative committee. Both changes were made surreptitiously. By whom, no one knows.

Members of the Commission have often said, in an attempt at humor, that if one hangs around Beacon Hill one soon becomes paranoiac. But the humor wears thin. One seriously begins to

question whether there is the will to make politics in this state better. The Commission would deduce other examples from its experience: the long struggle to get adequate funding, let alone office space, to do its work; the curious attempt to add another member by the Governor's appointment well into the Commission's work; the cloud of confusion and half-understood changes in the Commission's bills during the exhausting final hours of the unseemly rush to prorogation.

What the Commission encountered in its work was overt support and covert resistance. Legislation for reform was finally passed, to be sure, but only under strong pressure and with grudging assent. The will of the people finds its voice in the words and actions of its representatives. That, as the most elementary textbook has it, is what politics is all about. Those who hold power are the ones who have the power to change the way business is done in Massachusetts.

One may bemoan the apathy, or decry the cynicism, of the general public. But that, curiously, happens to be the posture of both the sentimental, disenchanted reformer and the corrupt, irresponsible politician: the public gets what it deserves. But if there is a lack of will to make politics better in this state, let us look where the responsibility starts, to our "leaders," the men and women who have been elected to conduct our public life.

For every member of the Special Commission and its Staff, the experience has been intense, educational and immensely rewarding in ways that money, the usual coin of the political realm, could never measure. The Commission would like to end

with nothing but positive sentiments and strong words of encouragement to the public. It can not. The Commission ends with words of seasoned skepticism. One needs to be precise: skepticism, not cynicism. Skepticism means that, whatever one's doubts, one must act as if one can make a difference. One never knows where the limits are until one presses against them to discover whether they are, indeed, limits or simply self-created excuses not to act, not to try.

It is in that spirit the Special Commission has acted. We have tried. We held public hearings on our investigations to show the average citizen that, yes, it is possible to ferret out the truth and to discover what was done. We used the extraordinary powers which the legislature bestowed upon us professionally and fairly and responsibly. We have proposed and gained the enactment of legislation which could improve the conduct of public business in the Commonwealth of Massachusetts.

We end, though, as we began. The major lesson to be learned from the experience of the Commission is that what is most needed in the Commonwealth of Massachusetts is confidence that we have the intelligence and the will to create good government. To say so, of course, is to sound like that scene in Henry IV when Hotspur boasts, "I can summon monsters from the deep." To which Prince Hal replies, "So can I. The question is, will they come."

To say we need confidence in government is not to create confidence in government. That will depend on many things. It will depend on the press and television to illuminate and to criticize the doings of government. It will depend on engaged

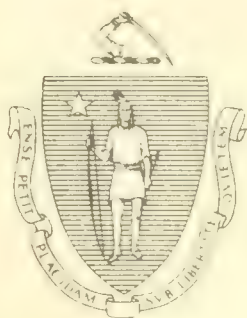
citizens to become informed and to demand good government. But it will depend most on those elected and appointed officials whose obligation is to govern well. They must have the will to act. All the Commissions and all the legislation in the world can not create that indispensable and necessary condition: the will and the desire of people in government to serve the people.

The mandate of the Special Commission was to look at just one aspect of public life, the award of contracts for the construction of state and county buildings. It took us more than two years to do our work. It will take more than ten years to do the rest, to create a climate of opinion where there is public trust because political leaders manifest the will to serve the public good.

That is why, with all its work, the Commission is only a beginning.

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Final Report
To The General Court
Of The Special Commission
Concerning State And County Buildings

December 31, 1980

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VOLUME II

REPORT ON THE INVESTIGATION OF MBM AND RELATED ENTITIES

TABLE OF CONTENTS

<u>CHAPTER I</u>	<u>Why the Commission Investigated Matters Relating to MBM</u>	1
<u>CHAPTER II</u>	<u>Corporate Overview of MBM</u>	5
A.	The Formation and Early History of MBM	5
B.	The Unsuccessful Attempt in 1969 to "Go Public"	6
C.	The Acquisition in 1971 of MCM	8
D.	The Combining in 1972-73 with IMS	12
E.	The Separation in 1975 from IMS	15
F.	The Termination of MBM in 1978-79	15
<u>CHAPTER III</u>	<u>MBM's Activities in Massachusetts prior to 1969</u>	17
A.	Activities during the Peabody Administration (1963-64)	17
B.	Activities during the Volpe Administration (1965-68)	21
<u>CHAPTER IV</u>	<u>MBM's Procurement of the UMass/Boston Project Management Contract</u>	26
A.	Introduction	26
B.	MBM's Decision in Late 1968 or Early 1969 to Make a Major Effort to Win Large Public Contracts in Massachusetts	27
C.	MBM's Attempts to Win a Contract to Provide a Management Information System for the BBC	29
D.	The Commonwealth's Decision to Use an Outside Project Management Firm on the UMass/Boston Project	34
E.	MBM's Initial Awareness of the Potential UMass/Boston Project Management Contract	42
F.	Issuance of the Formal Request for Proposals by the Designer Selection Board	44
G.	MBM's Decision to Have Former Governor Endicott Peabody Assist in MBM's Efforts to Obtain the UMass/Boston Contract	47
H.	The Fee Arrangement Between MBM and the Peabody Firm	51
I.	The October 1, 1969 Meeting of Peabody and MBM's Officers Regarding the UMass/Boston Contract	52
J.	The Formal Procedure by Which the UMass/Boston Project Management Contract Was to Be Awarded	53

K.	Peabody's Early Contacts with UMass Officials	56
L.	Peabody's Early Contacts with BBC Officials	58
M.	Activities by MBM Officials during October and November 1969	60
N.	The Short-lived Seelye-McKee Joint Venture Proposal	62
O.	Interviews of Five Semi-Finalists by the Designer Selection Board	63
P.	Endicott Peabody's Discovery of, and Response to, a Conflict of Interest	65
Q.	The DSB's Selection of Three Finalists on December 17, 1969	71
R.	The Alleged Meeting of Endicott Peabody and Deputy A&F Commissioner Albert H. Zabriskie on December 18 or 19, 1969	73
S.	The Alleged Meeting of MBM Vice President Anthony Mansueto and MBM Salesman Martin Heyman with A&F Commissioner Donald Dwight on December 19, 1969	76
T.	The MBM Christmas Party in New York on December 19, 1969	79
U.	The "Kick-off Meeting" for the UMass/Boston Project on Monday Morning, December 22, 1969	81
V.	Donald Dwight's Selection of MBM as the Winner of the UMass/Boston Project Management Contract	83
W.	Dwight's Selection of Haldeman & Goransson for One of the UMass/Boston Architectural Contracts	85
X.	Governor Francis W. Sargent's Knowledge or Lack of Knowledge of the Award of the UMass/Boston Project Management Contract	89
Y.	MBM Vice President Anthony E. Mansueto's Testimony About the UMass/Boston Contract	90
<u>CHAPTER V</u>	<u>Evidence Relating to Whether MBM Obtained the UMass/Boston Contract Through a Corrupt Agreement</u>	94
A.	Introduction	94
B.	Evidence that Contracts Were Awarded by the Volpe and Sargent Administrations in Return for Prior Commitments by the Winning Firms to Make Illegal Cash Payments	94
C.	Evidence that MBM Officials Admitted to Others that MBM Made a Commitment to Pay Cash to Manzi in Connection with the UMass/Boston Contract, and that Manzi Repeatedly Complained that MBM Was Slow in Living Up to Its Commitments on the UMass/Boston Contract	98
	1. Testimony of Frank R. Masiello, Jr.	98
	2. Testimony of William V. Masiello	101
	3. Testimony of Daniel J. Shields	101

4. Testimony of William F. Harding	102
5. Testimony of Stanley Davis	102
6. Affidavit of Maurice Khoury	103
D. Evidence that MBM Generated Tens of Thousands of Dollars in Cash for Payment to Politicians	103
1. Cash Generation and Questionable Accounting Practices by MBM	104
2. Alleged Cash Generation for MBM by Maurice Khoury	110
E. Evidence That MBM Paid At Least \$30,000 in Cash to Republican Fundraiser Albert Manzi After MBM Won the UMass/Boston Contract	114
1. The October 16, 1970 Payment to Fundraiser Albert Manzi	114
2. The Alleged Payment to Manzi in February 1972	117
3. The May 18, 1972 Parker House Meeting and MBM's May 23, 1972 Payment to William Masiello for Manzi	119
F. Conclusion	124
<u>CHAPTER VI</u> <u>The Terms of MBM's UMass/Boston Contract, MBM's Anticipated Profit, and MBM's Performance on the Contract</u>	126
A. Terms of the Contract	126
B. MBM's Anticipated Profit	130
C. MBM's Performance	131
<u>CHAPTER VII</u> <u>Challenges to MBM's UMass/Boston Contract</u>	135
A. The Bill Filed by Rep. Thomas F. Fallon in 1970	135
B. The Newspaper Articles in 1971 Criticizing MBM's UMass/Boston Contract	140
C. The Investigation in 1971 by a Special Legislative Committee Chaired by Senator Joseph J.C. DiCarlo and Representative Ralph L. Sirianni, Jr.	147
1. The Filing of an Order by DiCarlo, Sirianni, and Representative William F. Hogan Calling for an Investigation of MBM's UMass/Boston Contract	147
2. The February 1971 Meeting at DiCarlo's Home	149
3. Changes in the Wording of the Order Calling for an Investigation of MBM's UMass/Boston Contract	152
4. MBM's Discussions with Kelly about the DiCarlo-Sirianni-Hogan Legislation	153
5. The Selection of Members for the Committee	157
6. MBM's Purchase of Tickets for House Speaker Bartley's "Brunch"	160
7. The Investigation Conducted by the DiCarlo-Sirianni Committee	162
8. The First Draft of the DiCarlo-Sirianni Committee Report	170

9.	The Intercession of Senator Ronald C. MacKenzie and the Changing of the DiCarlo-Sirianni Committee Report	176
10.	Payments Made by MBM to DiCarlo and MacKenzie	188
11.	DiCarlo's Visit to MBM's New York Office	198
D.	The Investigation in 1972-73 by Auditor Joseph A. Davey of the Post Audit Bureau	202
<u>CHAPTER VIII</u>	<u>The Investigation, Prosecution, Appeals, and Post-Trial Motions of Joseph DiCarlo and Ronald MacKenzie</u>	208
A.	The Investigations of MBM in Philadelphia Which Led to the First Allegations About DiCarlo and MacKenzie	208
B.	The Forwarding of the DiCarlo-MacKenzie Allegations to the Boston Office of the Federal Bureau of Investigation	211
C.	The First Knowledge by DiCarlo and MacKenzie that They Were Being Investigated	213
D.	Events Leading to the DiCarlo-MacKenzie Indictments	214
E.	The DiCarlo-MacKenzie Trial	216
F.	Post-Trial Proceedings and Allegations	220
G.	Attempts to Induce MacKenzie Not to Implicate DiCarlo	228
<u>CHAPTER IX</u>	<u>The Manzi-Masiello Trial in 1979</u>	233
A.	Events Preceding the Manzi-Masiello Trial	233
B.	The Trial and Acquittals	236
C.	Masiello's Admission to the Commission that Masiello Committed Perjury at the Manzi-Masiello Trial; Masiello's Allegation that Manzi Also Committed Perjury at the Manzi-Masiello Trial; Related Allegations	240
<u>CHAPTER X</u>	<u>Activities in Massachusetts of William F. Harding and Daniel J. Shields at Times When They Were Not Working for MBM</u>	242
A.	Why the Commission Has Investigated the Activities in Massachusetts of Harding and Shields at Times When Harding and Shields Were Not Working for MBM	242
B.	Activities of Harding and Shields in Massachusetts Prior to Joining MBM	244
C.	Efforts by Harding and Shields to Win Public Contracts Through Essex County Commissioner Daniel J. Burke	249
1.	Initial Contacts Between Harding and Burke	249
2.	The MacKenzie-Tully Bill	251
3.	Burke's Agreement to Help Harding and Shields Obtain Essex County Contracts	252
4.	The Formation of PCM	254
5.	The BBC's Position Regarding Use of PCM by Essex County	256

6. Essex County Contracts Awarded to PCM	260
7. Payments to Burke by PCM Officials	262
8. The Refusal by Essex County Treasurer Thomas F. Duffy to Pay PCM's Invoices	265

<u>CHAPTER XI</u>	<u>Conclusion</u>	269
-------------------	-------------------	-----

APPENDICES

A. The Fee Arrangement Between MBM and the Peabody Firm	A-1
B. Evidence Bearing on MBM's Activities in Other States	A-16
C. MBM's Attempt to Win a Project Management Contract for the UMass/Worcester Medical School	A-29
D. MBM's Attempts to Win Contracts Regarding the Middlesex County Courthouse	A-35
E. MBM's Successful Efforts Regarding Its "Delay Claim" in 1972	A-40
F. MBM's Fee for Work at the Worcester County Jail	A-48

REPORT ON THE INVESTIGATION OF MBM AND RELATED ENTITIES

CHAPTER I

WHY THE COMMISSION INVESTIGATED

MATTERS RELATING TO MBM

When the Legislature established the Commission in April of 1978, it invested the Commission with authority to investigate any or all contracts awarded since January 1, 1968 "related to the construction of state and county buildings."¹ This broad grant of jurisdiction was enhanced by clarifying amendments enacted in July 1979² which explained (a) that the Commission could investigate certain types of contracts awarded before 1968 if they related to construction contracts awarded after January 1, 1968 and (b) that contracts awarded by the "state" should be understood to include contracts awarded by "public instrumentalities established under general or special laws" of the Commonwealth. The Commission has estimated that these provisions gave the Commission a universe of at least four thousand (4,000) contracts worth a total of approximately four billion dollars (\$4,000,000,000) that the Commission could investigate.³

The discretion given to the Commission in determining which of these contracts to investigate was almost as broad. The Commission was permitted to decide for itself which contracts within its jurisdiction to investigate and which not to investigate -- with one exception. The Legislature mandated that the Commission investigate "the awarding, implementation and the subsequent events concerning the contract between the firm of McKee-Berger-Mansueto, Inc. and the commonwealth relating to the management of construction of certain buildings on the Boston campus of the University of Massachusetts."⁴ Not only was the Commission thus required to investigate the MBM-UMass/Boston contract, but it also was required to conduct hearings in public and to file a public final

¹ Commonwealth of Massachusetts, Resolves, c. 5 (1978).

² Commonwealth of Massachusetts, Resolves, c. 11 (1979).

³ See Special Commission Concerning State and County Buildings, Interim Report to the General Court (January 15, 1979).

⁴ This requirement was contained in both Chapter 5 of the Resolves of 1978 and Chapter 11 of the Resolves of 1979.

report of its investigation.⁵ The Legislature singled out the MBM-UMass/Boston contract because of serious allegations about that contract that had received intense publicity and had been the catalyst⁶ for the Legislature's decision to create the Commission:

- On February 25, 1977, after a four-week trial, two prominent state senators -- Senate Majority (Democratic) Leader Joseph J.C. DiCarlo and Republican Senator Ronald C. MacKenzie -- were found guilty by a federal jury of violating the Hobbs Act and other federal statutes by virtue of accepting tens of thousands of dollars in cash from MBM in return for altering the report of a legislative investigation in 1971 into the MBM-UMass/Boston contract.⁷ DiCarlo and MacKenzie maintained their innocence through their unsuccessful appeals⁸ and insisted, in a new trial motion, that their trial lawyers had not represented them adequately because the trial lawyers had failed to counter the Government's claim of "extortion" with evidence that MBM had voluntarily made thousands of dollars of similar cash payments to fundraisers for Governor Francis W. Sargent and to other public officials more prominent than DiCarlo and MacKenzie.⁹

⁵ Id. In circumstances where a need for grand-jury-type secrecy or other considerations made it appropriate, hearings could be held in private.

⁶ See the History of the Commission, elsewhere in this Final Report.

⁷ Judgment and Probation/Commitment Order, United States v. DiCarlo, MacKenzie, Cr. 76-339-S; "DiCarlo, MacKenzie guilty on all counts," Boston Globe, February 25, 1977 (p.m. ed.), at 1.

⁸ See e.g. "MacKenzie, DiCarlo appeal," Boston Globe, August 24, 1977 (p.m. ed.), at 8. Robert L. Turner, "DiCarlo, MacKenzie may ask new trial," Boston Globe, September 24, 1977; Lawrence Collins, "DiCarlo admits taking \$11,500 from N.Y. firm," Boston Globe, April 8, 1980, at 1.

⁹ Defendants' Motion for a New Trial, filed December 23, 1977, in United States v. DiCarlo, MacKenzie, Cr. Nos. 76-339-1-S, 76-339-2-S(D. Mass.). The motion also singled out a payment or contribution that MBM allegedly made to Senate President Kevin B. Harrington (made at a time when Harrington was Senate Majority Leader and was actively seeking to become Senate President). Although not specifically mentioned in the motion, there also was evidence that MBM had made illegal payments or contributions to the 1970 gubernatorial campaign of Boston Mayor Kevin H. White, and to Senate Ways & Means Committee Chairman James A. Kelly, Jr. The allegations regarding some of these payments or contributions are discussed in Appendix F, infra.

- Allegations were reported in the press in 1978 to the effect that former Governor Endicott Peabody, acting as a private attorney on behalf of MBM, caused the Joint Legislative Committee on Post Audit and Oversight to terminate prematurely an investigation of the MBM-UMass/Boston contract in 1973.¹⁰ The Post Audit Committee set up a subcommittee chaired by Rep. Gerald M. Cohen to investigate the matter,¹¹ and it soon learned that the parent committee's chairman (Rep. Gerald Lombard) and staff director (William H. Finnegan) had taken it upon themselves in January 1978 to alter notes from 1973 Post Audit Committee meetings in which the MBM contract had been mentioned.¹²
- During the subsequent widely-publicized hearings of the Post Audit Subcommittee in 1978, questions were raised about why a private project management firm was employed for the UMass/Boston project and whether MBM used improper means to obtain the contract.¹³ Former Lieutenant Governor Donald R. Dwight -- who had been the Commissioner of Administration & Finance in 1969 who chose MBM for the UMass/Boston contract¹⁴ -- testified to the Post Audit Subcommittee that he may have selected MBM based upon a "dart-board theory."¹⁵

¹⁰ See e.g. Robert J. Rosenthal, article about the Post Audit Subcommittee investigation Boston Globe, February 3, 1978.

¹¹ "Sub-Committee Report on M.B.M." issued on August 14, 1978 by the Joint Legislative Committee on Post Audit and Oversight Subcommittee on the BBC Study ("the Post Audit Subcommittee"), at 1. The report of the Post Audit Subcommittee will be cited hereinafter as "P.A. Report."

¹² P.A. Report at 2, 96-101.

¹³ See P.A. Report at 2-3, 12-33.

¹⁴ Letter dated December 22, 1969 from A&F Commissioner Donald R. Dwight to BBC Director Walter Poitras announcing selection of MBM as project manager for the UMass/Boston project.

¹⁵ Testimony of Donald R. Dwight, P.A. 3/15/78 at 62. Note: In this report, "Sp. Comm." and "P.A." and "DiC" and "M/M" refer respectively to transcripts of testimony before the Special Commission Concerning State and County Buildings; the Joint Legislative Committee on Post Audit and Oversight Subcommittee on the BBC Study ("the Post Audit Subcommittee"); the federal court in United States v. DiCarlo, MacKenzie, Cr. 76-339-S (D. Mass. 1977); and the Superior Court in Commonwealth v. Masiello, Manzi, Nos. 019122-7, 018334 (Suffolk Cty. 1979).

When the Commission was established, the Post Audit Subcommittee followed the legislature's mandate that the Subcommittee conclude its own investigation of MBM and make the records of its proceedings available to the Commission.¹⁶ The Commission thereupon commenced its effort to fulfill its statutory mandate to study and report about the activities of MBM and related entities in Massachusetts.

¹⁶ Commonwealth of Massachusetts, Resolves, c.5 (1978).

CHAPTER II

CORPORATE OVERVIEW OF MBM

The Formation and
Early History of MBM

To understand certain significant aspects of the evidence relating to MBM, it is important to have a basic knowledge of major events in MBM's corporate history. MBM was incorporated in February of 1959 in New York.¹ MBM's three principals -- President Gerald McKee, Jr., Vice President/Secretary Seymour Berger, and Vice President/Treasurer Anthony E. Mansueto² -- formed MBM upon leaving firms doing similar work, where they had previously met.³ Berger headed up MBM's small technical staff, Mansueto was the major salesman, and McKee assisted in the sales effort while providing general direction for the new firm.⁴ MBM initially concentrated on construction cost estimating.⁵

One of MBM's first employees was Martin H. Heyman, an electrical estimator.⁶ Another early MBM employee was Jack S. Thomas, who also joined MBM during 1959.⁷ Ivan Soskel came to MBM in 1960.⁸ Heyman and Soskel later became salesmen covering the Massachusetts area for MBM, and Thomas later became manager of MBM's Boston office.⁹

1 MBM's certificate of incorporation was executed on February 16, 1959 and filed with the New York Department of State on February 18, 1959.

2 Testimony of Anthony E. Mansueto, 2 M/M 2/13/79 at 33-36.

3 Id. Also, testimony of Gerald McKee, Jr., 5 DiC 1/31/77 at 145-147.

4 Id.

5 Testimony of Gerald McKee, Jr., Sp. Comm. 6/26/80 at 19-20.

6 Testimony of Martin H. Heyman, 25 M/M 3/26/79 at 52-53.

7 Testimony of Jack S. Thomas, 10 M/M 2/26/79 at 42.

8 "McKee-Berger-Mansueto, Inc.: New York Office - Personnel Listing" dated February 1970.

9 Testimony of Anthony E. Mansueto, P.A. 5/23/78 at 8-9; Heyman testimony, M/M 3/26/79 at 53. McKee testimony, Sp. Comm. 6/26/80 at 20. Testimony of Jack S. Thomas, 11 DiC 2/8/77 at 4.

MBM's contracts in 1959 and the 1960s were generally small estimating jobs for architects.¹⁰ The size of such contracts typically was under \$10,000.¹¹

In the early and mid-1960s, MBM explored business possibilities outside New York.¹² An office was opened in Chicago which came, by the late 1960s, to generate most of MBM's sales and profits.¹³ MBM's efforts in Massachusetts were less successful. MBM did obtain a number of small jobs¹⁴ but not enough to justify opening a full-scale branch office.¹⁵

The Unsuccessful Attempt
in 1969 to "Go Public"

Late in 1968 or early in 1969, MBM decided to embark upon a major expansion. MBM President McKee had visions of MBM as the leader in a relatively new field called "construction management" or "project management" in which MBM would provide comprehensive analytical and supervisory services to public agencies and private companies that planned to have buildings built or renovated.¹⁶ Although this field was not invented by MBM, the use of the full package of services envisioned was not yet common, particularly by public agencies.¹⁷

¹⁰ "Construction Consultants Fire at One Target: Costs," Engineering News-Record, September 4, 1969, at 4.

¹¹ See id. at 6.

¹² Id. Also, McKee testimony, Sp. Comm. 6/26/80 at 20.

¹³ Notes of 8/2/79 interview of former MBM Chicago manager James E. Elias by Special Commission staff, at 1-3.

¹⁴ See charts entitled "Partial List of MBM Contracts in Massachusetts - Public & Private: 1964-1969" introduced as Exhibit 2A during McKee testimony, Sp. Comm. 6/26/80 at 21. The Commission staff prepared these charts from MBM job cards and other MBM documents.

¹⁵ Mansueto testimony, P.A. 5/23/78 at 9-10; see testimony of William V. Masiello, Sp. Comm. 6/24/80 at 4-5.

¹⁶ McKee testimony, P.A. 3/22/78 at 11-17.

¹⁷ See discussion among Gerald McKee, Jr. and Commissioners John William Ward, Walter J. McCarthy, and Lewis Weinstein, Sp. Comm. 6/26/80 at 26-30. See also McKee testimony, id. at 8-11.

Anticipating success in its new endeavors, MBM moved its offices to larger quarters at 2 Park Avenue in New York.¹⁸ MBM also engaged underwriters to float a public offering aimed at generating approximately \$1 million in new equity capital.¹⁹

The prospectuses filed with the Securities and Exchange Commission explained that \$350,000 of this new capital would be used to retire existing short-term debt. Another \$175,000 would finance MBM's new office in Manhattan as well as projected offices in three other cities.²⁰ MBM's reported profits for 1968 were \$90,000.²¹

The proposed public offering never came to be. Although MBM changed underwriters and incurred expenses approximating \$150,000 in connection with the public offering attempts, MBM was unable to make its public offering.²² Critically in need of at least \$500,000 to keep afloat,²³ MBM managed to obtain a \$500,000 loan in early 1970.²⁴

It was during this period that MBM sought and obtained the UMass/Boston contract. MBM was selected in December 1969 for the job,²⁵ and the formal

¹⁸ See Preliminary Prospectus dated March 28, 1969 filed by MBM with the United States Securities and Exchange Commission ("SEC"), at 5.

¹⁹ See Preliminary Prospectuses dated March 28, 1969 and July 25, 1969, filed by MBM with SEC; Preliminary Prospectus dated November 12, 1969, not filed with SEC.

²⁰ MBM Preliminary Prospectus dated July 25, 1969, at 5.

²¹ MBM Preliminary Prospectus dated March 28, 1969, at 6.

²² See letter dated December 23, 1969 from Gerald McKee, Jr. to Martin Heyman, expressing regret at abandonment of public stock offering; minutes of March 16, 1970 special meeting of MBM's board of directors, at 1-2; notes of 6/20/79 interview of Laventhol & Horwath auditor Arthur O. Hirshberg by Special Commission staff, at 2.

²³ See preceding paragraph of text. The Commission has also been told that MBM was having problems meeting its tax bills. See notes of 7/2/79 interview of former MBM bookkeeper Patricia Barilla by Special Commission staff, at 1-2; notes of 6/20/79 interview of former MBM comptroller Julius H. Beim by Special Commission staff, at 1. See also minutes of special meeting of MBM's board of directors, *supra* n. 22, at 2.

²⁴ Minutes of March 16, 1970 special meeting, *supra* note 22, at 2; minutes of August 12, 1970 annual meeting of MBM shareholders, at 3.

²⁵ Letter dated December 22, 1969 from A&F Commissioner Donald R. Dwight to BBC Director Walter Poittrast, announcing appointment of MBM as project manager for Project U67-4 #2A (UMass/Boston).

contract was executed in April 1970.²⁶ MBM ultimately received approximately \$5.5 million from the contract (and its extensions),²⁷ which made it more than ten times larger than MBM's previous largest contract.²⁸ Indeed, the UMass/Boston contract was the second largest contract that MBM ever received during the firm's 20-year existence.²⁹

The Acquisition
in 1971 of MCM

Despite its success in obtaining the UMass/Boston contract, MBM's financial picture remained clouded and its desire for expansion continued.³⁰ In an attempt to expand internationally³¹ and "turn two negatives into a positive,"³² MBM in 1971 acquired another company experiencing financial difficulties: Mauchly Construction Management, Inc. ("MCM").³³ It is necessary

²⁶ See Contract for Consultant Services no. 601 dated April 22, 1970, between the Bureau of Building Construction and McKee-Berger-Mansueto, Inc. Date supplied from approval dated April 22, 1970 by Donald R. Dwight of Memorandum of Approval #70-80, requesting approval of contract, including fees for services, between the BBC and MBM, for project management services on Project U67-4 #2A.

²⁷ See chart, "MBM Contracts for Project Management Services at UMass/Boston," prepared by Special Commission staff from MBM and BBC documents. This chart was introduced as Exhibit 7 at a hearing of the Commission, Sp. Comm. 5/28/80 at 12.

²⁸ Elias 8/2/79 interview, at 2.

²⁹ The largest contract that MBM ever received was an \$8 million contract to supervise the rehabilitation of 250 public schools in Chicago. McKee testimony, Sp. Comm. 6/26/80 at 105. The contract was awarded in 1973 and is briefly discussed in Appendix B, below. Another large contract that MBM received was a \$2 million contract received in 1972 for work at the Philadelphia International Airport. See letter dated June 29, 1972 from Gerald McKee, Jr. to "MBM Directors and Investors," announcing Philadelphia airport contract. That contract, which was terminated prior to the airport's completion, is also discussed in Appendix B.

³⁰ Financial statement of McKee-Berger-Mansueto, Inc. and Subsidiaries, year ended April 30, 1971, prepared by Laventhol Krekstein Horwath & Horwath, at 3. Hirshberg 6/20/79 interview, at 2. Notes of 6/21/79 interview of former MBM Finance Director Andrew H. Serell by Special Commission staff, at 3.

³¹ Notes of 6/18/79 interview of Gerald McKee, Jr. by Special Commission staff, at 2-3.

³² Notes of 7/25/79 interview of Peter T. Pallotta by Special Commission staff, at 3.

³³ Financial statements of Mauchly Construction Management, Inc. from August 1, 1970 to July 31, 1971, prepared by Laventhol Krekstein Horwath & Horwath, at 1-3, 5. Financial statements of McKee-Berger-Mansueto, Inc., year ended April 30, 1972, prepared by Laventhol Krekstein Horwath & Horwath, at 6.

to give some background information about MCM since some of the activities of MCM and its key employees are significant to later events involving MBM.

MCM was a direct descendant of Mauchly Associates, Inc., a company founded in April 1959 by John W. Mauchly.³⁴ Dr. Mauchly was the co-inventor of the first all-electronic computer.³⁵ Mauchly Associates had been formed to apply some of the new techniques made possible through computer technology.³⁶ One such application was computerized "critical-path method" ("CPM") scheduling of construction projects.³⁷ Although Mauchly Associates became a leader in CPM,³⁸ Dr. Mauchly's scientific abilities did not succeed in making Mauchly Associates a profitable corporation,³⁹ and it was acquired in 1968 by a conglomerate -- Scientific Resources Corporation ("SRC").⁴⁰ SRC also came to have financial problems,⁴¹ and in July 1970, the project management division of SRC (which had been acquired from Mauchly Associates) was sold to a group whose finances were arranged by a prominent Palestinian businessman based in Beirut, Lebanon: Maurice Khoury.⁴² Khoury was a Beirut- and London-trained

³⁴ "The Mauchly Story," undated flyer prepared by Mauchly Associates, Inc.

³⁵ Id.

³⁶ Id.

³⁷ Id.

³⁸ Id.

³⁹ Notes of 8/5/79 interview of former Scientific Resources Corporation ("SRC") Vice President Robert K. Stern by Special Commission staff, at 1. Registration Statement dated February 28, 1969, filed by SRC with SEC, at 16.

⁴⁰ SRC Registration Statement 2/28/69, at 5.

⁴¹ Annual Report of Scientific Resources Corporation, year ended September 30, 1970, filed with SEC, at F-3.

⁴² Letter dated July 24, 1970 from Mauchly Associates Vice President Don A. Mayerson to Mauchly Construction Management President Daniel J. Shields concerning an agreement in principle to sell Shields the project management division of Mauchly Associates, a wholly owned subsidiary of SRC. See also Pallotta 7/25/79 interview, at 1-2; notes of 10/9/79 interview of Peter T. Pallotta by Special Commission staff, at 1; testimony of Daniel J. Shields, Sp. Comm. 6/2/80 at 9.

economist.⁴³ He was also familiar with wealthy Arab businessmen looking to invest in American firms and with Arab bankers willing to lend money to American enterprises.⁴⁴

Khoury in early 1971 formed a holding company, International Management Services, Inc. ("IMS"), which acquired MCM.⁴⁵ IMS came to have other subsidiaries, including a fledgling television station in Bahrain (RTV-Bahrain Ltd), a hotel in Beirut (Transarabian Hotels), and a consulting firm based in Beirut (Associated Business Consultants, Ltd).⁴⁶ In addition to providing funds to keep MCM operating, IMS sought to utilize MCM's abilities in CPM for clients engaging in construction in the Middle East.

By late 1970 or early 1971, there were reasons why it seemed to make sense for MBM and MCM to combine forces. From MBM's point of view, MBM was in financial difficulty and could use the infusion of cash that might be possible from dealing with Khoury. McKee felt it could be worthwhile to enter the emerging Arab market and was also impressed with MCM's President, Daniel J. Shields.⁴⁷ Under Shields's leadership, MCM had obtained several public contracts in New York where, despite its being MBM's home base, MBM had never been very successful.⁴⁸ Moreover, MCM had made many proposals -- which were costly and time-consuming to put together and execute -- for contracts all over the country, several of which seemed likely to be awarded to MCM.⁴⁹

⁴³ Interview of Maurice Khoury on 5/26/80 by Special Commission staff.

⁴⁴ McKee testimony, Sp. Comm. 6/26/80 at 110-111. Serell 6/21/79 interview, at 2.

⁴⁵ Memorandum dated April 19, 1971 from MCM Vice President A. B. Zanchettin to all MCM management personnel "Subject: International Management Services, Inc."

⁴⁶ Id. Also, letter dated February 22, 1973 from IMS Finance Director Andrew H. Serell to attorney Hartley Chazen, accompanied by corporate chart and brief descriptions of companies comprising IMS.

⁴⁷ McKee 6/18/79 interview, at 2-3.

⁴⁸ Id. at 3.

⁴⁹ Id. at 2. Minutes of December 17, 1971 special meeting of the MBM board of directors, at 3.

There were advantages in a merger from MCM's and IMS's standpoints, as well. MBM was holding the "flagship" public project management contract in the United States -- the UMass/Boston job -- and MBM seemed from outward appearances to be large and prospering,⁵⁰ in contrast to MCM.⁵¹

Shields and McKee were, in addition, receiving encouragement and advice that they should merge MCM and MBM from a New York businessman named Jerre Sans. Sans helped bring Shields and McKee together and stood to make a substantial finder's fee if the acquisition were consummated.⁵²

In May of 1971, Shields and McKee reached what might be termed an "agreement to agree."⁵³ By late August or early September of 1971, MBM and MCM had informally combined forces,⁵⁴ and the formal acquisition took effect on December 31, 1971, when MBM purchased all of the outstanding stock of MCM from IMS.⁵⁵

During 1972, MBM's new MCM subsidiary won a \$2 million contract from the Philadelphia International Airport.⁵⁶ MCM's Shields soon became more prominent in the sales and management of MBM.⁵⁷

⁵⁰ Memorandum dated August 31, 1971 from Daniel J. Shields to "All Employees [of MCM, Inc.]" regarding the merger with MBM.

⁵¹ Pallotta 7/25/79 interview, at 3.

⁵² Letter dated July 16, 1971 from Daniel J. Shields to Jerry [sic] Sans confirming finder's fee commitment concerning any MBM-MCM agreement. Sans has also been known as Gerard Santini.

⁵³ Letter dated May 4, 1971 from Gerald McKee, Jr. to Dan[iel] Shields outlining proposed acquisition agreement.

⁵⁴ Pallotta 7/25/79 interview, at 2. Desk calendar of Jack S. Thomas at 9/8/71 reads "Mauchly move in."

⁵⁵ Minutes of December 17, 1971 MBM board of directors special meeting, at 2-5. Financial statements of McKee-Berger-Mansueto, Inc. and Subsidiaries, year ended April 30, 1972, prepared by Laventhol Krekstein Horwath & Horwath, at 6.

⁵⁶ See letter dated June 29, 1972 from Gerald McKee, Jr. to "MBM Directors and Investors" supra n. 29.

⁵⁷ Notes of 7/24/79 interview of Anthony E. Mansueto by Special Commission staff, at 6.

The Combining in 1972-73
with IMS

In 1972 MBM and IMS (MCM's former parent corporation) took the first steps toward formal merger by forming a jointly owned company -- McKee International⁵⁸ -- to seek project management contracts in the Middle East.⁵⁹ A formal merger of IMS and MBM occurred at the end of 1972,⁶⁰ and a restructuring of officerships took place in 1973.⁶¹ Shields became President of MBM (which included what had been MCM),⁶² and McKee moved up to become Chairman of the Board of MBM and President of IMS.⁶³ Khoury remained as IMS's Chairman.⁶⁴

By the spring of 1973, the compatibility between McKee and Shields had dissolved and each was determined to force the other out of the company.⁶⁵ On July 15, 1973 at a board meeting held in Beirut, Lebanon, McKee succeeded in ousting Shields.⁶⁶ Shields had come to the meeting thinking that he would convince the board to fire McKee, based upon a financial analysis prepared by Shields and MBM comptroller Peter T. Pallotta which attempted to show that McKee had been siphoning off hundreds of thousands of dollars from MBM.⁶⁷ McKee, in turn, attempted to portray Shields as a man with gangster connections

⁵⁸ McKee testimony, Sp. Comm. 6/26/80 at 108-109.

⁵⁹ Id. See also notes of 4/3/80 interview of Gerald McKee, Jr. by Special Commission staff, at 1.

⁶⁰ See letter dated January 17, 1973, from Gerald McKee, Jr. to Milton Israel announcing that the December 11, 1972 "agreement and plan of reorganization" involving MBM and IMS had been closed.

⁶¹ Minutes of February 5, 1973 special meeting of MBM's board of directors, at 1, 5.

⁶² Id. See also memorandum (on IMS letterhead) dated February 16, 1973 from Gerald McKee, Jr. to "All MBM Staff."

⁶³ Id. See also memorandum (on IMS letterhead) dated February 16, 1973 from Gerald McKee, Jr. to "All IMS/MBM Staff."

⁶⁴ McKee testimony, Sp. Comm. 6/26/80 at 109.

⁶⁵ Shields testimony, Sp. Comm. 6/2/80 at 87-89. Mansueto 10/10/79 interview, at 4.

⁶⁶ Testimony of Gerald McKee, Jr., 13 M/M 3/2/79 at 160-161.

⁶⁷ Shields testimony, Sp. Comm. 6/2/80 at 86-90.

and as an unstable individual who had convincingly threatened on more than one occasion to kill McKee.⁶⁸ McKee, as noted, prevailed at the Beirut board meeting, and both Shields and Pallotta were fired.⁶⁹

Despite the circumstances of Shields's termination, McKee signed an agreement with Shields in September 1973 calling for Shields to be paid \$25,000 per year for five years as a "consultant."⁷⁰ The agreement contained a modified non-competition clause, the alleged violation of which was eventually used as a basis for terminating payments to Shields.⁷¹

In the meantime, the IMS/MBM financial situation deteriorated as the 1970s continued.⁷² MBM fell hundreds of thousands of dollars behind in its withholding taxes,⁷³ fell behind in rent and credit card payments,⁷⁴

⁶⁸ See letter ("Personal & Confidential"), stamped "DRAFT Jun 21 1973 Monasch & Chazen," to Maurice Khoury. This draft probably was prepared by or for attorney Hartley J. Chazen.

⁶⁹ Pallotta learned he was fired on Monday, July 16, 1973. Pallotta 7/25/79 interview, at 5.

⁷⁰ Consulting Agreement dated September 26, 1973, signed by Gerald McKee, Jr. (for MBM) and Daniel J. Shields. See minutes of 9/26/73 special meeting of MBM's board of directors, at 1-3.

⁷¹ Letter dated December 30, 1974 from D[onald] W. Zeigler to Arnold Stream, Esq., "Subject: Daniel J. Shields." Memorandum ("Confidential") dated April 30, 1975 from "Jerry" [Gerald McKee, Jr.] to Stanley Emerson. See generally Chapter X, infra.

⁷² See Financial Statements of McKee-Berger-Mansueto, Inc. and Subsidiaries, years ended December 31, 1974 and 1973, prepared by Laventhol & Horwath, at 1-2.

⁷³ See memorandum dated February 12, 1976 from "H.J.C." [attorney Hartley J. Chazen] to "A.C.S." [attorney Arnold C. Stream] re: Lipper-Ghazoul, at 4.

⁷⁴ See, e.g., letter [undated; probably from 1973] from A. Melvin of Ledisco Financial Services to International Management Services, Inc., requiring return of two Carte Blanche cards (expiration date 3/74), because credit privileges had been revoked; notes of 7/9/79 interview of Daniel J. Shields by Special Commission staff, at 5; Shields testimony, Sp. Comm. 6/2/80 at 76-77; minutes of August 4, 1972 special meeting of MBM's board of directors.

engaged in check kiting in order to meet payroll,⁷⁵ and defaulted on hundreds of thousands of dollars of borrowings it had made.⁷⁶

Since MBM's major project management contracts appear to have been profitable,⁷⁷ it should be explained that MBM's and IMS's financial difficulties appear to have been due to overexpansion,⁷⁸ payment by the corporation of personal expenses of certain executives,⁷⁹ large "advances" and "loans" to officers that were not repaid,⁸⁰ expensive sales proposals,⁸¹ and unsuccessful investments in foreign operations not related to project

⁷⁵ For example, in July 1973 MBM did not have sufficient funds to meet its payroll on time. To deal with the situation, MBM salesman William F. Harding was asked to "loan" \$35,000 of his personal funds to MBM -- even though Harding had only \$600 in his bank account. Harding was told that if he would give MBM a personal check for \$35,000 he would enable MBM to issue its payroll checks on time. He was assured that before his \$35,000 check to MBM could bounce (but after the payroll was paid), MBM would receive sufficient funds from other sources to "repay" him the \$35,000 and thereby keep his check to MBM from bouncing. Harding agreed to do this, using his New Orleans bank account for this purpose. The Commission learned of this by means of documents and interviews, including the following: William F. Harding check #194 dated 7/6/73 to MBM for \$35,000 (on Harding's account no. 275-324-3 at International City Bank & Trust Co. of New Orleans, LA.; bank statement for that account for the period ending 7/26/73; MCM cash receipts book entry 7/9/73; MCM check #724 dated 7/9/73 to MBM for \$35,000 (on MCM account no. 028-1-042838 at Chase Manhattan Bank, NY); MCM cash disbursements book entry for 7/9/73; MBM bank statement for the period ending 7/23/73 on its account no. 020-1-049491X at Chase Manhattan Bank, NY, entries dated 7/9/73, 7/16/73; MBM check #6140 dated 7/6/73 to Harding for \$35,000; notes of 7/11/79 interview of William F. Harding by Special Commission staff, at 1.

⁷⁶ See, e.g., Complaint, Greater Washington Industrial Investments, Inc. v. International Management Services, Inc. and McKee-Berger-Mansueto, Inc., 75 Civ. 1697 (S.D.N.Y.), filed April 6, 1975.

⁷⁷ See, for example, the discussion of the UMass/Boston contract in Chapter VI, *infra*.

⁷⁸ See Hirshberg 6/20/79 interview, at 2.

⁷⁹ See notes of 8/7/79 interview of Samuel Beckerman by Special Commission staff, at 1, 7.

⁸⁰ See minutes of October 3, 1975 special meeting of MBM's board of directors, at 4; Hirshberg 6/20/79 interview, at 2; Testimony of Commission senior financial investigator James J. O'Neill, Sp. Comm. 6/25/80 at 35-37; a chart of loans and advances to McKee and Mansueto for the years 1969-1973 that apparently were not repaid, entered as O'Neill Exhibit 14, *id.* at 35.

⁸¹ Notes of 11/12/79 interview with Seymour Berger by Special Commission staff, at 2; Mansueto 7/24/79 interview, at 7.

management.⁸²

The Separation in 1975
From IMS

In January of 1975, IMS borrowed \$150,000 from a company named Spire Capital Services, Inc.⁸³ MBM served as collateral for the loan.⁸⁴ In April 1975, IMS defaulted on its obligation to repay the \$150,000 and Spire seized the collateral (MBM), thereby becoming sole owner of MBM.⁸⁵ McKee continued as President of MBM.⁸⁶ Khoury had no further association with MBM.⁸⁷

The Termination of
MEM in 1978-79

Even in its stripped-down form, MBM could not restore itself to financial equilibrium.⁸⁸ Damaged by several factors, one of which undoubtedly was adverse publicity emanating from Massachusetts in the aftermath of the DiCarlo-MacKenzie trial, MBM entered 1978 in severe financial straits.⁸⁹ According to MBM Vice President Berger, the coup de grace was an unsuccessful contract application that MBM made in the Middle East in the late 1970s: MBM spent substantial amounts of money pursuing the contract and was left in an untenable financial position when the contract was lost.⁹⁰

Toward the end of 1978, McKee, Berger, and Mansueto went their own ways, and MBM became defunct.⁹¹ McKee formed "McKee Associates, Project

⁸² MBM financial statements, years ended 12/31/74 and 1973, supra n. 72, at 9. Hirshberg 6/20/79 interview, at 2.

⁸³ See memorandum from Chazen to Stream, supra n.73, at 16-22; financial statements of MBM and subsidiaries, years ended December 31, 1974 and 1973, supra no. 72, at 14.

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Id.

⁸⁷ Khoury 5/26/80 interview. See also discussion of the Khoury affidavit in Chapter V, infra.

⁸⁸ See memorandum from Chazen to Stream, supra n. 73, at 28.

⁸⁹ See, e.g., memorandum to files dated February 1, 1978 from HJC [Hartley J. Chazen], re: Boston Press Involvement, at 4; copies of the memo were sent to McKee and Mansueto and attorneys Arnold Stream and William Looney.

⁹⁰ Notes of 11/12/79 interview of Seymour Berger by Special Commission staff, at 2.

⁹¹ McKee testimony, 12 M/M 3/1/79 at 72-73.

Managers, Inc."⁹² Berger formed "Berger & Associates, Cost Consultants, Inc."⁹³ Mansueto became the president of Comprehensive Management Services, Inc., a relatively new project management subsidiary of a larger corporation based in Detroit, Michigan.⁹⁴

⁹² See letterhead of letter dated September 13, 1979 from Gerald McKee, Jr., to Arnold Stream.

⁹³ Berger 11/12/79 interview, at 1.

⁹⁴ Mansueto testimony, 2 M/M 2/13/79 at 33. See letterhead of letter dated August 23, 1979 from Cathy Palkowski, secretary of Anthony E. Mansueto, to the Commission.

CHAPTER III

MBM'S ACTIVITIES

IN MASSACHUSETTS

PRIOR TO 1969

Activities During
the Peabody Administration
(1963-64)

MBM's first concerted attempts to do business in Massachusetts appear to have occurred in 1963, with MBM's sales efforts being conducted primarily by Anthony Mansueto.¹ The Commission does not have Mansueto's diaries from 1963, but it appears from other MBM records² and from testimony³ that MBM's first significant contact with Massachusetts occurred through dealings with the firm of Frank R. Masiello, Jr. & Associates, Inc. The Masiello firm apparently was just one of several architectural firms to which Mansueto sent "blind" letters soliciting estimating work for MBM.⁴ As a result of the letter to the Masiello firm, a meeting was arranged.

Mansueto went to the Masiello office in Worcester on January 8, 1964.⁵ The Masiello firm was the architect for certain work at the Concord

¹ MBM apparently had a few small jobs for clients in Massachusetts prior to 1963, according to cards that may be described as "job cards." It is impossible to tell from these cards what the exact value of such contracts may have been, but it is likely that the jobs were for \$1,000 or less, based upon other information.

² See MBM sales department file card for Frank R. Masiello, Jr. & Assoc., Inc.

³ See testimony of Anthony E. Mansueto, 2 M/M 2/13/79, at 39; Mansueto testimony, P.A. 5/23/78, at 6; testimony of Frank R. Masiello, Jr., Sp. Comm. 6/16/80 at 4-6.

⁴ Mansueto testimony, supra n. 3.

⁵ Mansueto pocket diary for 1/8/64; MBM file card for the Masiello firm, supra n. 2.

prison,⁶ and Mansueto expressed interest in a subcontract to provide estimating services.⁷ Masiello was impressed by Mansueto and pursued the matter by introducing Mansueto to BBC Director Horace M. Chase on February 6, 1964, at which time Chase "verbally approved" MBM for estimating work at Concord at a fee of \$1,300.⁸ In June of 1964, the Masiello firm engaged MBM to do cost estimating on the Mill Pond Road Housing for the Elderly project for a fee of \$600.⁹

Mansueto and Frank Masiello quickly developed a close personal friendship.¹⁰ Although Masiello did not have any large-scale contracts that he could award to MBM, Masiello agreed to provide introductions for Mansueto to people who could help MBM obtain contracts in Massachusetts.¹¹ Masiello was a donor and fundraiser for then-Governor Endicott Peabody,¹² and one of the first introductions that Masiello provided was to Sherwood J. ("Woody") Tarlow, Peabody's chief fundraiser.¹³ It was the policy of the Peabody administration to give preference to firms whose principals contributed to the Peabody campaign,¹⁴ and Mansueto was quickly apprised of this.¹⁵ Mansueto's calendar

⁶ Contract between Commonwealth of Massachusetts and Frank R. Masiello, Jr., Project No. P61-1, Title: "Repair Walls and Guard Towers," Location: "M.C.I., Concord."

⁷ MBM file card for the Masiello firm, supra n. 2.

⁸ Mansueto pocket diary for 2/6/64; MBM file card for the Masiello firm, supra note 2.

⁹ MBM file card for the Masiello firm, supra n. 2.

¹⁰ Mansueto testimony, P.A. 5/23/78 at 6-7; 7 M/M 2/20/79 at 12.

¹¹ Mansueto testimony, P.A. 5/23/78 at 8, 14; 2 M/M 2/13/79 at 42. Frank Masiello testimony, Sp. Comm. 3/27/80 at 19-20; Sp. Comm. 6/16/80 at 17-19.

¹² Testimony of Peabody finance chairman Sherwood J. Tarlow, Sp. Comm. 4/7/80 at 27-28; Frank Masiello testimony, Sp. Comm. 6/16/80 at 21.

¹³ Frank Masiello testimony, Sp. Comm. 6/16/80 at 7. Tarlow testimony, Sp. Comm. 4/7/80 at 12.

¹⁴ Testimony of Endicott Peabody, Sp. Comm. 6/19/80 at 10-14; testimony of William A. Waldron, Sp. Comm. 4/9/80 at 23-25, 29-34; Tarlow testimony, Sp. Comm. 4/7/80 at 53, 73-75.

¹⁵ Frank Masiello testimony, Sp. Comm. 6/16/80 at 7-8.

reveals that he was introduced to Tarlow by Masiello on February 25, 1964.¹⁶

Less than a week later, Mansueto's diaries contain the entries: "Money to Masiello \$1,000"¹⁷ and "Ch[ec]k to Masiello."¹⁸ Mansueto also made entries mentioning Tarlow and containing telephone numbers for Tarlow.¹⁹

On March 15, 1964, Mansueto and his wife -- along with Frank Masiello and his wife -- attended a birthday party for Governor Peabody on the 11th floor of the Statler Hilton Hotel (now the Park Plaza) in Boston.²⁰ According to Peabody campaign records, Mansueto paid \$1,000 for tickets.²¹ Hundreds of people attended this affair.²² Mansueto made it a point to be introduced to the Governor.²³

Mansueto had (or, at least, sought) further contact with fundraiser Tarlow in the ensuing months, judging from Mansueto's calendars.²⁴ This contact, and further contact with Frank Masiello, apparently culminated in a meeting involving Governor Peabody, Mansueto, and Frank Masiello at 2:15 p.m. on June 3, 1964 at the Governor's fundraising suite in the Statler Hilton Hotel.²⁵

¹⁶ Mansueto pocket diary for 2/25/64.

¹⁷ Mansueto pocket diary for February 1964 "next month [i.e., March]" page; Mansueto pocket diary for 3/2/64.

¹⁸ Mansueto pocket diary for 3/4/64.

¹⁹ Mansueto pocket diaries for 2/64 ("next month" page), 3/4/64.

²⁰ Mansueto pocket diary for 3/15/64. Mansueto testimony, P.A. 5/23/78 at 14.

²¹ Schedule of contributions to Campaign for Elective Office filed by Governor Peabody Birthday Dinner Committee on March 23, 1964. Mansueto's gross pre-tax salary in 1964 appears to have been \$18,200. See weekly salary listings contained on MBM "Pension List" dated June 17, 1965.

²² Mansueto testimony, 7 M/M 2/20/79 at 43.

²³ Mansueto testimony, P.A. 5/23/78 at 14.

²⁴ Mansueto pocket diaries for 3/20/64, 4/27/64, 5/18/64, and June 1964 "next month" page.

²⁵ Mansueto pocket diary for 6/3/64; Frank Masiello testimony, Sp. Comm. 6/16/80 at 7; testimony of William V. Masiello, Sp. Comm. 6/24/80 at 5. For the functioning of the fundraising suite in general, see Frank Masiello testimony, Sp. Comm. 3/27/80 at 24-36.

Apparently convinced that MBM should establish a presence in Massachusetts, Mansueto had an "MBM telephone" installed in Masiello's office later in June 1964,²⁶ and MBM thereafter indicated in its sales material that it had a location in Worcester.²⁷

Business in Massachusetts started picking up for MBM. On July 8, 1964, MBM submitted a proposal for estimating work on the Division of Employment Security Building being constructed for the Government Center Commission. A \$3,500 contract was awarded to MBM on July 12, 1964.²⁸ MBM also won some other small contracts in Massachusetts in 1964.²⁹

On September 10, 1964, Governor Peabody lost his bid for renomination.³⁰ While the Commission has no evidence that Mansueto thereafter made any further contributions to the Peabody campaign, Mansueto's diaries for September 14, 16, and 24, 1964 contain the following entries: "Money for Peabody," "\$ for Peabody," and "1000 - Boston."³¹

Unlike Masiello's firm, which was awarded contracts by the Peabody administration after Peabody lost his renomination bid but before Peabody left office,³² MBM apparently was less successful. In February 1965, shortly after Peabody vacated the Governor's office, Mansueto lamented in a letter to Masiello:³³

"Woody Tarlow - ah, there's a rub. I once had a dream that Massachusetts would use MBM to some advantage, but I guess those days are long past...."

²⁶ "Speed letter" dated 6/23/64 from Frank R. Masiello, Jr. to "Tony" [Anthony E. Mansueto] of MBM; William Masiello testimony, Sp. Comm. 6/24/80 at 5; Mansueto testimony, M/M 2/13/79 at 45.

²⁷ See, e.g., MBM invoice form dated April 25, 1967 which lists the following locations: New York; Washington, D.C.; Chicago; and Worcester, Mass.

²⁸ MBM Proposal, dated July 8, 1964, for Division of Employment Security Building, accepted July 12, 1964 by Shepley, Bulfinch, Richardson & Abbott, architects. See letter dated May 25, 1965 from Joseph P. Richardson to the Government Center Commission, "Re: Division of Employment Security Building," at 2.

²⁹ See charts entitled "Partial List of MBM Contracts in Massachusetts - Public and Private: 1964-1969," compiled by Commission staff and introduced as McKee Exhibit 2A, Sp. Comm. 6/26/80 at 21.

³⁰ Peabody lost the September 10, 1964 Democratic gubernatorial primary to his Lieutenant Governor, Francis X. Bellotti. Commonwealth of Massachusetts, Public Document No. 43, Election Statistics-1964, at 217.

³¹ Mansueto diaries for 9/16/64, 9/14/64, and 9/24/64.

³² See discussion of Masiello & Associates elsewhere in this Final Report.

³³ Letter dated February 11, 1965 from Anthony E. Mansueto to Frank R. Masiello, Jr.

"Advise me Frank. I made quite an investment in the potential Massachusetts market and came out hurting pretty badly. As I said, advise me Frank."

Activities
During the Volpe
Administration (1965-68)

As it turned out, Frank Masiello became a donor and fundraiser for the Republicans in Massachusetts after Republican John A. Volpe became Governor in 1965.³⁴ Masiello was aware of the influence of Albert P. ("Toots") Manzi, "a very powerful political figure," in the Volpe administration.³⁵ Manzi, a Worcester grocer active in Republican politics, was well known for his effectiveness in fundraising and his power to influence appointments and contract awards.³⁶ Masiello introduced Anthony Mansueto of MBM to Manzi and to other individuals in the Volpe administration who could be helpful in MBM's attempts to win public contracts in Massachusetts. Mansueto first met Manzi in October 1967 through an introduction by Frank Masiello, apparently in October 1967.³⁷ Mansueto testified that he had several subsequent meetings with Manzi during the Volpe administration, with some of those meetings taking place in the anteroom to Governor Volpe's office in the State House.³⁸ The testimony about Mansueto's contact with Manzi finds support in the appointment books that Mansueto maintained during the period:

- Mansueto's appointment book contains an entry on October 12, 1967 indicating a meeting with Manzi at 11:30 a.m.³⁹

³⁴ Frank Masiello testimony, Sp. Comm. 3/27/80 at 59-60.

³⁵ Id. at 12-13. Masiello knew of Manzi's influence as early as the first Volpe administration in 1961-63. Id.

³⁶ See, e.g., the discussion of Manzi's role in the sections on the Joseph P. Gentile School and A New Campus for Holyoke Community College, in Volume 3 of this Final Report.

³⁷ Frank Masiello testimony, Sp. Comm. 6/16/80 at 17-18; Mansueto pocket diary for 10/12/67; Mansueto testimony, 2 M/M 2/13/79 at 42.

³⁸ Mansueto testimony, 2 M/M 2/13/79 at 43-44.

³⁹ Mansueto pocket diary for 10/12/67. See also sources cited in note 37, supra.

- On February 1, 1968, Mansueto's appointment book shows a home telephone number for Manzi.⁴⁰
- On August 20, 1968, Mansueto's book indicates meetings at the Governor's Office with Manzi and with Dino Patronis (who was an administrative aide to Governor Volpe).⁴¹
- An October 30, 1968 entry indicates that Mansueto had lunch on that day with Manzi and Masiello in Worcester.⁴² Mansueto's appointment book for October 29, 1968 -- the day before that Worcester meeting -- contains the notation: "\$ for Worcester."⁴³
- A November 7, 1968 entry indicates that Mansueto met with Manzi -- who by then was a member of the Massachusetts Turnpike Authority -- at the Authority's offices in the Prudential Center.⁴⁴
- Mansueto's appointment book on November 8, 1968 lists telephone numbers for Manzi at the Turnpike Authority and at the Governor's office.⁴⁵

These are only some of the entries mentioning Manzi in Mansueto's 1968 appointment books.⁴⁶

Frank Masiello also apparently introduced Mansueto in 1967 to Anthony P. DeFalco, the Volpe administration's Commissioner of Administration and Finance.⁴⁷ As A&F Commissioner, DeFalco was responsible for selecting or

⁴⁰ Mansueto pocket diary for 2/1/68.

⁴¹ Mansueto pocket diary for 8/20/68.

⁴² Mansueto pocket diary for 10/30/68.

⁴³ Mansueto pocket diary for 10/29/68.

⁴⁴ Mansueto diary for 11/7/68. At some point after September 1967, MBM prepared an "Experience Brochure" for the Massachusetts Turnpike Authority and Mansueto appeared before the Authority. It is not clear whether the presentation occurred on November 7, 1968 or on some other date. See Exhibit 14B, 4 M/M 2/15/79, and Mansueto testimony, 4 M/M 2/15/79 at 140-145.

⁴⁵ Mansueto pocket diary for 11/8/68.

⁴⁶ See also Mansueto pocket diaries for 9/5/68 and 10/31/68, for example.

⁴⁷ See Mansueto pocket diary for 7/14/67. See also letter dated June 22, 1967 from Anthony E. Mansueto to Anthony [P.] DeFalco, concerning an appointment to acquaint DeFalco with MBM's services.

approving the selection of architects and many types of consultants for state projects.⁴⁸

It appears from Mansueto's appointment book that Mansueto first met with DeFalco at the State House at 3:30 p.m. on September 7, 1967.⁴⁹ Another meeting between Mansueto and DeFalco apparently occurred at 10 a.m. on October 4, 1967.⁵⁰ Mansueto met again with DeFalco at the State House on February 1, 1968; Mansueto's diary entry indicates that the meeting was supposed to start at 11:00 a.m. but that DeFalco was "late as usual."⁵¹ Mansueto's 1968 appointment books contain additional entries relating to DeFalco.⁵²

Mansueto also apparently met BBC engineer James J. Cusack through Frank Masiello.⁵³ In 1968, Cusack was the BBC's Chief Examining Engineer and was regarded by many people who dealt with the BBC as the brightest technical person employed by the BBC and a likely successor to then-BBC Director Horace M. Chase.⁵⁴ There are several entries relating to Cusack in Mansueto's 1968 appointment books.⁵⁵ In an internal BBC memorandum on September 20, 1968, Cusack recommended to BBC Director Chase that MBM be selected for a \$26,000 contract for CPM work.⁵⁶ Chase accepted Cusack's recommendation,⁵⁷ and

48 G.L. c.7 s.30B.

49 Mansueto pocket diary for 9/7/67.

50 Mansueto pocket diary for 10/4/67.

51 Mansueto pocket diary for 2/1/68.

52 Mansueto pocket diaries for 1/24/68, 2/68 ("next month" page), 3/18/68.

53 Mansueto testimony, P.A. 5/23/78 at 8.

54 When Cusack sought the BBC Directorship in 1969, he was supported by letters of recommendation by many people in government and in the construction field, as demonstrated by letters those people sent to the A&F Commissioner Donald R. Dwight. The Commission found such letters at the State Records Center in Grafton. See also testimony of James J. Cusack, P.A. 3/21/78 at 102.

55 Mansueto pocket diaries for 8/20/68, 9/68 ("next month") page, 10/16/68, 11/7/68, 11/25/68, 12/9/68.

56 BBC memorandum dated September 19, 1968 from F. Johnson to "H[orace] M. Chase via J[ames J.] Cusack" re: Critical Path Method for Project H64-1. (Cusack's handwritten recommendation at the bottom of the memorandum is dated 9/20/68.)

57 BBC Memorandum of Approval #69-21, dated October 1, 1968, signed by Horace M. Chase and approved (10/7/68) by A. P. DeFalco.

the job was awarded to MBM on October 7, 1968 by A&F Commissioner DeFalco.⁵⁸

These introductions that Frank Masiello made for Mansueto to well-placed individuals during the Volpe administration seem to have proved useful. On July 24, 1968, Mansueto wrote a memorandum to his assistant, Ivan Soskel, about "Massachusetts and other considerations."⁵⁹ In the memorandum, Mansueto said, in part:

"I spoke to [Frank] Masiello on Monday July 22 and he advised me of the following:

1. DMJM [an architectural firm] has been requested through our Massachusetts political friends to use MBM on their new Holyoake [sic] College project. . . . BBC will soon be advised that we are to be the cost consultants for this project. Frank M. suggests we wait until after July 29 before we approach BBC on their CPM program, since our political friends will be talking to the BBC prior to that time. . . .
2. I get the general impression from Frank Masiello that we are being pushed by the State people and that some of the work that we have got is not as coincidental as it might seem - people are being asked to use MBM. . . ."

The CPM program referred to in Mansueto's July 24, 1968 memorandum may have been the \$26,000 job that was awarded to MBM on October 7, 1968. As to the Holyoke Community College project, that is a subject about which Frank Masiello and others testified at length before the Commission. According to the testimony, which is discussed elsewhere in this Final Report, the principal architectural contracts for the design of a new campus for Holyoke Community College were awarded starting in 1968 to the Los Angeles, California firm of Daniel Mann

⁵⁸ Id.

⁵⁹ MBM internal memorandum dated July 24, 1968 from Anthony E. Mansueto to Ivan Soskel re: "Massachusetts and other considerations."

Johnson & Mendenhall ("DMJM") in return for DMJM's agreement -- worked out through Frank Masiello -- that DMJM would give to Manzi tens of thousands of dollars in cash as "campaign contributions" for Republican campaigns.⁶⁰

Frank Masiello on occasion made direct efforts to help MBM win contracts. On May 24, 1968, Masiello sent a letter to the City Manager of Worcester recommending that MBM be hired to provide cost estimates for the Elm Park School (on which Masiello's firm was the architect).⁶¹ MBM received the contract.⁶²

According to Frank Masiello's testimony in 1980 to the Commission, Mansueto was well aware by the late 1960's that public contracts in Massachusetts often went to those who would pay for them, particularly those who made their "contributions" in cash.⁶³ The "preference" given to "contributors" had existed during the Democratic administration of Endicott Peabody as well as during the Republican administrations of John Volpe.⁶⁴

Having acquired "political friends" in Massachusetts, MBM decided toward the end of 1968 to open a small sales office in Boston.⁶⁵ By having an actual office in Massachusetts, it was felt that MBM would be less likely to be at a disadvantage when competing against "Massachusetts firms" for public jobs.⁶⁶

⁶⁰ See the section on A New Campus for Holyoke Community College, elsewhere in this Final Report.

⁶¹ Letter dated May 24, 1968 from Frank R. Masiello, Jr., to Worcester City Manager Francis J. McGrath re: Elm Park School Cost Control Analysis.

⁶² "Consultant's Agreement" for the Elm Park Replacement School, dated September 18, 1968, signed by Nathan Feder for MBM and by Francis J. McGrath for the City of Worcester.

⁶³ Frank Masiello testimony, Sp. Comm. 6/16/80 at 20-21; Sp. Comm. 3/27/80 at 69.

⁶⁴ Peabody testimony, Sp. Comm. 6/19/80 at 10; Frank Masiello testimony, Sp. Comm. 3/27/80 at 8-9, 13-15.

⁶⁵ See, e.g., Mansueto pocket diary for 10/30/68; note sheet, containing the date 12/6/68 and apparently written by Mansueto, re: "Boston."

⁶⁶ See memorandum dated July 11, 1969 from Gerald McKee, Jr. to "Marty" [Martin H.] Heyman, re: "Boston Office Operations."

CHAPTER IV

MBM's PROCUREMENT OF THE
UMASS/BOSTON PROJECT MANAGEMENT CONTRACT

Introduction

In December of 1969, MBM was selected as project manager for the new Boston campus of the University of Massachusetts.¹ In April of 1970, a formal contract document was signed calling for MBM to receive a fixed fee of approximately \$2.3 million and additional fees on a "cost-plus" basis.² Pursuant to this contract (and extension contracts), MBM eventually received more than \$5.4 million in total fees.³ The UMass/Boston contract was by far the largest contract MBM had ever received in terms of fees, being more than ten times as large as MBM's next largest contract as of 1969.⁴

The UMass/Boston contract also apparently was enormously profitable for MBM. MBM's own documents reveal that MBM expected more than 50 percent of its

1 MBM was officially designated by A&F Commissioner Donald R. Dwight on December 22, 1969 for contract U67-4 #2A, the UMass/Boston project management contract. See letter of appointment dated December 22, 1969, from Donald R. Dwight to Walter J. Poitras, Director of the Bureau of Building Construction; letter of appointment dated December 23, 1969, from Walter J. Poitras to McKee, Berger & Mansueto, Inc.

2 The fixed fee was \$2,295,000. It was intended to cover the salaries of several key MBM staff members as well as certain office, administrative, and computer costs. In addition, MBM was paid cost plus 20 percent for salaries of other employees and for other reimbursable expenses (such as for office furniture, vehicles, and supplies). MBM was also called upon to administer certain subcontracts. MBM was to act as middle-man in passing on fees from the Commonwealth to those subcontractors, and MBM was to receive a payment equal to five percent of those subcontractors' fees for MBM's supervisory and administrative services in regard to those subcontracts. "Contract for Consultant Services," number 601, Massachusetts State Project number U67-4 #2A, dated January 28, 1970, signed by Walter J. Poitras for Commonwealth of Massachusetts and Gerald McKee, Jr., for MBM. Formal approval of the contract was delayed by fee negotiations; it occurred on April 22, 1970 with the signing by A&F Commissioner Donald R. Dwight of Memorandum of Approval #70-80. For further discussion of the terms of the contract, see Chapter VI, infra.

3 The total was \$5,488,913.65, as determined by Commission staff from the records of the Office of the Comptroller of the Commonwealth. See Chart: "MBM Contracts for Project Management Services at UMass/Boston," introduced as Exhibit 7 at a Commission hearing. Sp. Comm. 5/28/80 at 12.

4 MBM's largest contract prior to the UMass/Boston contract was its contract for services on the Franciscan Hospital in Illinois, at a fee of \$485,000, according to former MBM Vice President James E. Elias. Notes of 8/2/79 interview of James E. Elias by Special Commission staff, at 2. Elias was manager of the Chicago branch office of MBM through 1970. See also MBM Preliminary Prospectus dated 7/25/69, filed with the Securities and Exchange Commission, at 10.

\$2.3 million fixed fee to be profit,⁵ and the other fees that MBM received on the contract were computed on a "cost-plus" basis (which would seem automatically to entail additional profit).

MBM applied for and won the UMass/Boston contract at a time when MBM appears to have been desperately in need of receiving a large and lucrative contract. As of late 1969, MBM had incurred major expenses in anticipation of floating a public offering of its stock, yet the public offering had fallen through in December.⁶ Had MBM failed to obtain the UMass/Boston contract, it might well have gone out of business in early 1970, according to MBM's outside auditor.⁷ It is not surprising, therefore, that MBM made an all-out effort to obtain the UMass/Boston contract, as discussed in the following sections of this report.

MBM's Decision in Late 1968
or Early 1969 to Make a Major Effort
to Win Large Public Contracts in Massachusetts

At some point late in 1968 or early in 1969, MBM decided to pursue business in Massachusetts on a more intensive basis than it had previously done. Instead of occasional forays into Massachusetts by MBM salesmen such as Anthony Mansueto and Ivan Soskel, MBM decided to assign one of its employees to be a resident full-time salesman for the New England area.

⁵ MBM's analysis of the \$2,295,000 fixed fee identified costs of \$1,014,052 and gross profit of \$1,280,948. Document headed "U-Mass Boston Campus 459-004 Summary of Budget" from MBM files, identified by MBM President Gerald McKee, Jr. as produced by MBM. McKee testimony, Sp. Comm. 6/26/80 at 38-40. For further discussion, see Chapter VI, infra.

⁶ See discussion in Chapter II, supra.

⁷ Notes of 6/20/79 interview of Arthur O. Hirshberg by Special Commission staff, at 1.

Martin Heyman, the person selected to be MBM's Boston "regional manager," had joined MBM as one of the firm's first employees.⁸ After working for MBM for almost a decade as an electrical estimator, Heyman expressed an interest in opening and managing the Boston office.⁹ He began his sales efforts in January 1969¹⁰ and took up residence in Boston in June 1969.¹¹

In a memorandum from McKee to Heyman regarding "Boston Office Operations,"¹² McKee explained the three major reasons behind MBM's decision to establish a permanent physical presence in Boston. First, MBM had concluded that a large segment of important potential sales would be unavailable to out-of-state firms such as MBM; thus, a local office was necessary in order to avoid discrimination in contract awards. Second, the presence of a local office would be reassuring to potential clients. Third, MBM's ability to handle larger and longer-tenured contracts would be enhanced if MBM had a local office which could serve as a base of operations and logistic support.

But McKee made clear in the memorandum that much of the work acquired from clients in the Boston area would still be performed from MBM's New York office and that the new Boston office should be considered "an organic part of the New York operation" with "[n]othing [being] done to set aside or distinguish Boston as a separate entity unless absolutely necessary for the orderly administration of the Boston office."¹³

Heyman was anxious to prove himself a capable salesman. Thus, he pursued both public and private work and sent in regular reports of his activities. The

⁸ "McKee-Berger-Mansueto, Inc., New York Office - Personnel Listing," dated February 1970, gives Heyman's "seniority date" as 12/4/59. The company was formed by McKee, Berger, and Mansueto on February 18, 1959.

⁹ Notes of 8/21/80 interview of Martin H. Heyman by Special Commission staff, at 1-2.

¹⁰ Notes of 6/26/79 interview of Martin H. Heyman by Special Commission staff, at 1.

¹¹ Id.

¹² Memorandum dated July 11, 1969 from Gerald McKee, Jr. to "Marty" [Martin H.] Heyman re: "Boston Office Operations."

¹³ Id. at 2.

Commission has had access to some of those reports.¹⁴

In February or March of 1969, Heyman prepared a chart of decision-makers in the Massachusetts state government.¹⁵ At the top of the chart was the name of Donald Dwight, Commissioner of Administration and Finance ("A&F"). Dwight had assumed that position -- which included the responsibility for selecting designers and certain kinds of consultants for state buildings -- in January 1969.¹⁶ Dwight was appointed to the position as one of the first acts of Massachusetts's new Acting Governor, Francis W. Sargent.¹⁷ Sargent had been Lieutenant Governor until Governor John A. Volpe accepted a position in the Cabinet of the newly elected President Richard M. Nixon.¹⁸

Although Anthony Mansueto had developed a friendship, or at least an acquaintanceship, with the former A&F Commissioner, Anthony DeFalco,¹⁹ Mansueto did not know Dwight.²⁰ At the bottom of Martin Heyman's chart of Massachusetts state officials, Heyman wrote (apparently to Mansueto): "Can former Commissioner DeFalco put in a good word...with...Dwight...?" An additional note indicated that BBC engineer James J. Cusack had agreed to introduce Heyman to other BBC employees.

MBM's Attempts to Win a
Contract to Provide a
Management Information System for the BBC

MBM did receive a few small contracts from the Commonwealth of Massachusetts

¹⁴ E.g., documents headed "Activity Report of Martin Heyman -- Wk. end. 3/22/69," "M. Heyman -- Sales Report -- thru 4/5/69."

¹⁵ Handwritten document headed "State of Massachusetts -- Administration," identified and approximately dated by Heyman in 6/26/79 interview, at 4.

¹⁶ Testimony of Donald R. Dwight, P.A. 3/15/78, at 14.

¹⁷ Id. at 13-14.

¹⁸ Id. at 11.

¹⁹ Notes of 10/10/79 interview of Anthony E. Mansueto by Special Commission staff, at 1; Heyman 6/26/79 interview, at 3.

²⁰ Mansueto testimony, P.A. 6/9/78 at 78-79.

in late 1968 and early 1969.²¹ In each of these contracts, MBM apparently was selected by the project architect, and formal approval was then granted by the BBC.²²

The first significant contract that MBM sought directly from the Commonwealth seems to have been a contract to prepare a management information system for the BBC.²³ The contract apparently had the potential of being worth hundreds of thousands of dollars.²⁴ In a memorandum apparently written in late February or early March of 1969, Heyman described the scope of the work as being a study of procedures, administrative techniques, construction budget preparation, and other matters, as well as consideration of the possibility of introducing electronic data processing to the BBC.²⁵

Heyman wrote in the memorandum that it "looks like [the] Commissioner of Admin. & Finance will request proposals." Heyman reported that BBC Director Horace M. Chase had received unsolicited proposals from MBM and from another firm named Arcon. Heyman said that he had spoken with an individual from A&F who

²¹ For example, MBM received a \$26,000 contract from the Commonwealth of Massachusetts on October 7, 1968 to perform CPM consulting for the architectural firm of Desmond & Lord on the New Public Health Laboratory and Power Plant at the Institute of Laboratories in Jamaica Plain. Contract for Consultant Services No. 459 dated October 7, 1968, Massachusetts State Project No. H64-1, between the BBC and MBM. MBM was hired as cost consultant at a fee of \$1,500 for Curtis & Davis Architects on a study of updating buildings and utilities at MCI Norfolk. Letter dated February 13, 1969 from Peter R. Stark of Curtis & Davis, Architects, to Horace M. Chase, re: "Study ... Norfolk Prison ... No. P-68-5R." MBM was also engaged by Daniel Mann Johnson & Mendenhall ("DMJM") for cost estimating services on Holyoke Community College, Mass. State Project No. EJ 68-2.

²² See, e.g., letter dated July 29, 1969 from BBC Director Horace M. Chase (signed by Acting BBC Director Walter J. Poitras) to Daniel Mann Johnson & Mendenhall ("DMJM") approving DMJM's request to employ MBM for estimating on the Holyoke Community College project.

²³ Mansueto testimony, P.A. 5/23/78 at 8.

²⁴ Since the BBC request for proposals on a management information system dated April 10, 1969 set the anticipated value of the contract at \$40,000 to \$80,000, and since Donald R. Dwight's letter to James D. Fitzgerald dated May 6, 1969 specified that "the proposal for BBC represents a major step down from what the agency had originally proposed," it may be inferred that the first BBC proposal was worth well over \$100,000. See text accompanying notes 45-47, infra.

²⁵ Undated memorandum identified by Martin H. Heyman (Heyman 6/26/79 interview, at 5) as being in his handwriting, entitled "Management Info. System for BBC." This document contains handwritten comments by Anthony E. Mansueto, as well as the notation "Mtg was held we think on this Thurs. 3/13" (which dates the document as March 1969).

"promised that we [MBM] will be invited to propose," but Heyman worried: "Is our invitation only a c[o]urtesy? Is it possible that some less qualified firms will be proposing? Is a formal request necessary?"

Mansueto, upon reading Heyman's memorandum, wrote some comments across the bottom of the page: "Mtg was held we think on this Thurs. 3/13." He also wrote, "3/14 - Called Manzi @ his office. Wants us to push for prop[osal]. He will introd[uce us] to Commissioner."

A meeting with A&F Commissioner Donald R. Dwight was, in fact, arranged, and it took place less than two weeks later. On March 25, 1969, Manzi introduced Mansueto and Heyman to Dwight, with whom they discussed the management information system for the BBC.²⁶ According to Heyman, Dwight was "very cordial and friendly."²⁷ Immediately following the meeting with Dwight, Mansueto and Heyman met with Dwight's deputy, Charles E. Shepard.²⁸

While in Boston on March 25, 1969, Mansueto had lunch with BBC engineer Cusack.²⁹ Heyman also attended.³⁰ They discussed not only the management information system but also a market study that MBM proposed to perform for the BBC.³¹

Mansueto also had a meeting on March 25, 1969, with William Masiello and Senator James A. Kelly, Jr.³² Heyman apparently did not attend this

²⁶ Affidavit dated August 23, 1980, executed by Martin H. Heyman in Newton, Massachusetts, at 2. See also Heyman Sales Activity memorandum dated March 28, 1969; Mansueto diaries for 3/25/69, 3/26/69; Mansueto testimony, P.A. 6/9/78 at 68, 78-79.

²⁷ Heyman 8/23/80 affidavit, at 2.

²⁸ Mansueto testimony, P.A. 6/9/78 at 78. Heyman 3/28/69 Sales Activity memorandum.

²⁹ Mansueto testimony, P.A. 6/9/78 at 80. Mansueto pocket diary, 3/25/69.

³⁰ Heyman 3/28/69 Sales Activity memorandum.

³¹ Heyman Sales Activity memorandum.

³² Mansueto monthly calendar at 3/25/69; see Mansueto testimony, P.A. 6/9/78 at 80.

meeting,³³ and it is not clear what the purpose of the meeting was.³⁴

Martin Heyman continued to work on the management information system and market survey proposals. On March 26, 1969, Heyman met with Dr. Richard deNeufville of M.I.T. regarding the management information system.³⁵ DeNeufville was A&F Commissioner Donald Dwight's consultant and adviser on the proposed management information system contract.³⁶ On March 31, 1969, Heyman met with BBC engineer Cusack about the market study, and Heyman also met with BBC Director Chase about the management information system.³⁷

Apparently, MBM concluded that it was making some progress in its efforts to obtain significant new business in Massachusetts, because on February 24, 1969, Mansueto had written in his diary: "Decision re: Boston space, etc. (Thinking on it),"³⁸ and by April 1, 1969, Heyman's report reflected visits to "many bldgs. for Boston office w/agent."³⁹ On April 28, 1969 Mansueto circulated a memorandum announcing that MBM had arranged to lease a small

³³ Heyman's sales activity memorandum does not mention a meeting with William Masiello or Senator Kelly.

³⁴ Mansueto testified that the meeting was probably related to "the continuing business of extending MBM's name in front of people." Mansueto testimony, P.A. 6/9/78 at 80.

³⁵ Heyman 3/28/69 sales activity memorandum.

³⁶ See letter dated May 6, 1969 from Dwight to MBTA construction chief James D. Fitzgerald; memorandum dated May 5, 1969 from Dwight to Deputy A&F Commissioner Charles E. Shepard.

³⁷ Memorandum from M[artin] Heyman to A[nthony] E. Mansueto, "Sales Report - thru 4/5/69."

³⁸ Mansueto pocket diary for 2/24/69.

³⁹ Heyman 4/5/69 Sales Report.

office on Newbury Street in Boston as of May 1, 1969.⁴⁰

On April 10, 1969 the BBC issued a formal request for proposals for the management information system.⁴¹ Heyman's sales activity report indicates that two days later, on Saturday, April 12, 1969, Heyman had lunch with "Sam Flaksman, Secretary to Governor Sargent."⁴² In an interview with Commission staff, Heyman said that Flaksman was a relative of Heyman's mother's cousin and that the luncheon was purely social. Heyman stated that he listed the luncheon simply to make his report look more impressive and that Mansueto -- to whom Heyman sent the report -- never asked for any follow-up.⁴³ Heyman did follow up with A&F Commissioner Dwight whom Heyman telephoned on April 14, 1969 regarding the management information system.⁴⁴

On May 2, 1969, however, an objection was raised to the letting of a large contract for a management information system for the BBC. James D. Fitzgerald, a former chairman of the Department of Public Works who in 1969 was in charge of construction for the Massachusetts Bay Transportation Authority,⁴⁵ wrote a letter to A&F Commissioner Dwight calling the proposed BBC contract "a real waste of the taxpayers money...." Fitzgerald said that a management information system was already in use in other state agencies and that the proposed expenditure of \$40,000 to \$80,000 "for just an outline of the work to be done" for the BBC was unnecessary.⁴⁶

⁴⁰ Memorandum dated April 28, 1969 from Anthony E. Mansueto to G[erald] McKee, Jr. and nine others, re: "New Office - Boston."

⁴¹ Bureau of Building Construction, Request for Proposals dated April 10, 1969, for a study of "A[utomated] D[ata] P[rocessing] implementation."

⁴² Memorandum from Martin H. Heyman to Anthony E. Mansueto, entitled "Sales Activity Week of April 7 [1969]."

⁴³ Heyman 6/26/79 interview, at 17.

⁴⁴ Heyman "Sales Activity Week of April 7" memorandum.

⁴⁵ Memorandum dated May 5, 1969 from "DRD" [A&F Commissioner Donald R. Dwight] to "CES" [Deputy A&F Commissioner Charles E. Shepard].

⁴⁶ Letter dated May 2, 1969 from James D. Fitzgerald to Donald Dwight, concerning a management information system for the BBC.

Dwight responded by letter dated May 6, 1969 in which he wrote that "the proposal for BBC represents a major step down from what the agency had originally proposed."⁴⁷ Dwight, however, apparently did pass on Fitzgerald's comments to deNeufville for evaluation,⁴⁸ and the management information system contract was eventually scaled down.⁴⁹

It may be that the reduction of the management information system contract caused MBM to lose interest in it. In any event, MBM in the summer of 1969 became interested in a vastly larger and more lucrative contract -- the contract to provide project management services for the new Boston campus of the University of Massachusetts.

The Commonwealth's Decision to Use
an Outside Project Management Firm
on the UMass/Boston Project

In the spring of 1969, the University of Massachusetts was drafting proposed legislation for the appropriation and the procedures to govern the construction of its projected new campus in Boston. The idea of a Boston campus for the University of Massachusetts had originated at least as far back as the Peabody administration. Legislation had been passed and was signed into law by then Governor Peabody on June 18, 1964 authorizing a campus in, or in the vicinity of, Boston, for the University of Massachusetts.⁵⁰ Classes had started at a temporary site, the former Boston Gas building on Arlington Street, in the fall of 1965.⁵¹ After several years of wrangling about the location of the permanent site for UMass/Boston, the UMass trustees finally bowed to the political realities in November 1968 and settled on a sanitary landfill

⁴⁷ Letter dated May 6, 1969 from Donald R. Dwight to James D. Fitzgerald.

⁴⁸ See id. and Dwight's 5/5/69 memorandum to Shepard, cited in n. 36, supra.

⁴⁹ Memorandum of Approval #69-107 dated June 2, 1969 and signed by Horace M. Chase, approved by Donald R. Dwight on June 4, 1969, awarded the contract for a systems and procedure study to Arcon at a fee not to exceed \$9,750.

⁵⁰ Acts of 1964, c.562.

⁵¹ Message dated August 6, 1969 from Acting Governor Francis W. Sargent, introducing H.5616. Journal of the House, August 1969.

area at Columbia Point in Dorchester.⁵² A decision was reached to build the UMass/Boston campus in two phases. Phase I would encompass six buildings and site development, at a cost (including site acquisition) of \$150 million. Phase II would follow, costing an additional \$200 million.

The pressure to build the UMass/Boston campus as quickly as possible was intense.⁵³ The Arlington Street facilities were clearly inadequate,⁵⁴ and the children born during the post-war "baby boom" were just reaching college age. Construction costs were rising rapidly, so that every month of delay was likely to result in hundreds of thousands of dollars of higher costs.⁵⁵

UMass/Boston's Director of Planning and Development, Francis E. O'Brien, Jr., expressed the financial concerns in a memorandum dated June 9, 1969. Discussing the proposed budget of \$150 million for the first phase of the campus construction, O'Brien wrote:⁵⁶

"The \$150,000,000 figure was based on the ability of the Commonwealth to move a large and complex project more rapidly than it has ever done before, following a design and construction schedule that would have the doors of phase 1 buildings open in 1972. The usual design and construction schedule of the Commonwealth would place an opening date of phase 1 in 1975. The cost, following the 1975 open date schedule, would be approximately \$195,000,000. The higher cost is due solely to escalation of construction cost."

O'Brien then complained that inadequate staffing of the BBC (which would handle the project) and of the university's own planning and development office would

⁵² Loring Swaim, "Politics of 60's the Backdrop for Development of Scandal," Lowell Sun, April 10, 1978. UMass internal memorandum dated February 24, 1978, entitled "Summary of [UMass] Board of Trustees Involvement with Supervision of Construction at UM/B," at 1.

⁵³ See, e.g., letter dated July 18, 1969 from UMass Chancellor Francis L. Broderick to Board of Higher Education Chancellor Richard Millard.

⁵⁴ Swaim, "Politics of 60's," supra n. 52.

⁵⁵ Broderick 7/18/79 letter to Millard, supra n. 53.

⁵⁶ Memorandum dated June 9, 1969 from Francis E. O'Brien, Jr. to UMass/Boston Chancellor Francis L. Broderick, UMass Treasurer Kenneth W. Johnson, and Deputy A&F Commissioner Charles E. Shepard, re: "UMass/Boston: Columbia Point Site - Legislation."

make the \$195 million price tag -- rather than the \$150 million total -- inevitable:

"For the Commonwealth to save about \$45,000,000 in capital outlay, it is necessary to staff the planning office of the University and the office of the Bureau of Building Construction to move the project expeditiously. This has not been done. Requests for increase in staff of the planning office have been cut by University administration and by the executive office of the Commonwealth; the Bureau of Building Construction does not have positions that may be assigned only to this project.

"Given the shortage of staff situation, it is quite unlikely that the 1972 date and the \$150,000,000 budget will be met. It is more likely that the 1975 date and the \$195,000,000 will occur."

On July 2, 1969, UMass President John W. Lederle wrote to UMass/Boston Chancellor Francis L. Broderick, reporting that the UMass board of trustees had voted on June 30, 1969 to seek a capital outlay of \$150 million for Phase I of UMass/Boston. Lederle noted that the projected 1972 opening date involved an "extremely tight schedule" and added that "we are accepting a tremendous challenge to open at Columbia Point in 1972. If we get the support [of the Governor and Legislature for the \$150 million appropriation] we must deliver." Lederle suggested that the best way to meet the tight schedule would be through additional staffing of the BBC, with a special commission as an alternative.⁵⁷ Presumably, a special commission would have been structured on the order of the Government Center Commission (which had been responsible for many of the buildings in the Government Center redevelopment),⁵⁸ or, perhaps, on the model of the UMass Building Authority (which had built several buildings at UMass's Amherst campus but which was restricted, by law, to self-liquidating buildings such as dormitories and parking garages).⁵⁹

On July 3, 1969, a wording change in the draft legislation was suggested which would have enabled the university to bypass the BBC and to avoid some of the delays that might be inherent in establishing a new special commission. In a

⁵⁷ Letter dated July 2, 1969, from UMass President John W. Lederle to Chancellor Francis L. Broderick, confirming his understanding of the June 30, 1969 trustee action.

⁵⁸ Acts of 1960, c.635.

⁵⁹ G.L. c.75 Appendix.

memorandum to UMass/Boston Chancellor Broderick, planning director O'Brien proposed three additional paragraphs that "would permit the University to design, construct and equip the Columbia Point Campus without recourse to the Bureau of Building Construction."⁶⁰ The draft legislation would have empowered the UMass board of trustees directly -- without the BBC or any other agency acting as intermediary -- to hire the necessary architects, engineers, contractors, and consultants.

It is not entirely clear how the university expected to manage the massive effort and to achieve the projected time and cost savings. The model of the UMass Building Authority, which had constructed some dormitories and other self-amortizing structures on its own, was not truly applicable, since it had operated on a much smaller scale than that proposed for the UMass/Boston campus.⁶¹ Nor does it appear that planning director O'Brien had any thought, as of July 1969, of engaging a professional project management firm to oversee the work.⁶² Rather, it seems that O'Brien felt that the mere absence of BBC-imposed bureaucratic delays and "red tape,"⁶³ coupled with the hiring of a few professionals from appropriate disciplines,⁶⁴ would suffice. (Indeed, even after the project was well underway, O'Brien repeatedly expressed the view that the university could have managed the project itself, at far less expense

⁶⁰ Memorandum dated July 3, 1969 from "Frank" [Francis E.] O'Brien [,Jr.] to Chancellor F[rancis L.] Broderick, "Subject: U. Mass. Columbia Point Campus Legislation."

⁶¹ The largest project undertaken by the UMass/Building Authority as of 1969 was the main building of the Campus Center in Amherst with a total project cost of \$11,593,945. Table of UMass Building Authority buildings, prepared by Special Commission staff. By contrast, the UMass/Boston campus, with a first phase costing \$150 million and additional phases projected to cost more than \$200 million more, was to be the largest project ever undertaken by the Commonwealth. Swaim, "Politics of 60's," supra n. 52.

⁶² See O'Brien 7/3/69 memorandum to Broderick.

⁶³ Notes of 5/15/79 interview of Francis E. O'Brien, Jr. by Special Commission staff, at 6.

⁶⁴ Notes of 6/13/80 interview of Francis E. O'Brien, Jr. by Special Commission staff, at 2.

than the multi-million dollar fee paid to MBM.)⁶⁵ University officials tried to persuade government officials that the BBC, as then constituted, was incapable of handling the job with the necessary speed⁶⁶ and that the solution was either to enlarge the BBC staff or, preferably, to turn the job over to the university.⁶⁷

On August 6, 1969, Acting Governor Sargent filed an appropriation bill for the UMass/Boston project.⁶⁸ Rather than seeking the full \$150 million which the university felt was necessary for Phase I of the project, ⁶⁹ Sargent decided to ask only for \$50 million to cover "the initial stages of construction of the first phase" of UMass/Boston.⁷⁰

The bill introduced by the Governor did not adopt the language which would have permitted the university to oversee the entire project itself. On the other hand, it did attempt to respond to the concern that the BBC could not, without

⁶⁵ See e.g., memorandum dated January 15, 1971, from Frank O'Brien to James Cusack, "Subject: Columbia Point/Schedule of Building Completion Dates," at 2; memorandum dated April 3, 1972, from O'Brien to [Deputy A&F] Commissioner [Albert H.] Zabriskie, at 1, 5.

⁶⁶ Broderick 7/18/69 letter to Millard, supra n. 53, at 1.

⁶⁷ Id. See also letter dated July 25, 1969 from Chancellor Francis L. Broderick to Governor Francis W. Sargent.

⁶⁸ Message dated August 6, 1969 from Acting Governor Francis W. Sargent, introducing H.5616 of 1969, supra n. 51.

⁶⁹ Broderick 7/18/69 letter to Millard supra n. 53, at 2.

⁷⁰ Governor's Message accompanying H. 5616 (Aug. 1969), supra n. 51, at 2. It may be that the decision to seek only \$50 million reflected some degree of agreement with concerns expressed in a letter dated June 6, 1969 from the Massachusetts Finance Advisory Board to Sargent and to the Ways & Means Committee chairmen. In that letter, the board members insisted that the Commonwealth's large borrowings were "courting financial disaster." Specific mention was made of the \$150 million sought for UMass/Boston. Although the Governor sought, and the legislature appropriated, only \$50 million in 1969, an additional appropriation of \$80 million was made the following year.

augmentation, handle the project expeditiously. The language proposed by the Governor in section 8 of the bill was as follows:

"The executive office for administration and finance shall establish in the bureau of building construction a special unit to be assigned exclusively to the planning, development and supervision of construction of the University of Massachusetts campus as authorized by this act. The director of building construction may, with the approval of the commissioner of administration, temporarily assign any permanent or temporary employee of said bureau or may employ such additional professional engineers as may be required for the supervision of the project; provided, that the salaries and expenses of all such employees during the period of such assignment shall be paid from funds made available by this act, as a part of the cost of the development and construction of the project. No increase in the number of permanent positions in said bureau shall be allowed on account of this act."

In other words, a special BBC unit would be required to be set up to expedite the UMass/Boston project, but it would have to be staffed either with present BBC employees or by hiring new personnel on a temporary basis. Since the BBC's staff at that time was already far behind in supervising existing projects,⁷¹ and since this proposed legislation would not permit the BBC to increase its permanent staff, the bill would obviously leave only one sensible strategy open to the BBC: to use as few permanent employees as possible on the UMass/Boston project, with the rest of the special unit's staff coming from temporary hirings of new personnel. The bill permitted outside consultants to be hired, provided that the A&F Commissioner approved their fees.⁷²

It is not clear who made the decisions (a) to reject the university's suggestion that the university itself manage the project; and (b) to prevent the BBC from expanding its permanent staff in order to handle the UMass/Boston project, which was the largest project ever undertaken by the Commonwealth as

⁷¹ P.A. Report at 13. See also minutes of June 30, 1969 meeting of UMass board of trustees, cited in 2/24/78 Summary of Board of Trustees Involvement, supra n. 52.

⁷² H.5616, App. A, section 9, supra n. 51.

well as a project where time was of the essence. Nor is it clear why these decisions were made.

The Sargent-filed bill was passed by the Legislature on August 24, 1969. The provisions about the special BBC unit and the use of consultants were passed almost exactly as Sargent had proposed.⁷³ Governor Sargent signed the bill into law on August 29, 1969.⁷⁴

Although the UMass/Boston appropriation bill encouraged the BBC to use outsiders to help coordinate and supervise the UMass/Boston project, the BBC could have chosen to hire individuals from various specialities rather than to hire a single project management firm. Exactly how, when, and by whom the decision was made to use an outside firm is not entirely clear.

Walter J. Poitrast, then the Acting BBC Director, has testified that he decided to use outsiders because he wanted to divert as little BBC manpower as possible from other projects.⁷⁵ Poitrast said that the idea to use a single outside firm was either suggested to him by UMass/Boston planning director O'Brien or arrived at jointly during discussions between Poitrast and O'Brien.⁷⁶

⁷³ The only change was the deletion of the explicit permission for the BBC director to employ "additional professional engineers." It is not clear why that language was removed.

⁷⁴ Acts of 1969, c.898 at 961-962.

⁷⁵ Testimony of Walter J. Poitrast, P.A. 3/7/78 at 7-8.

⁷⁶ Id. at 8-9.

Although O'Brien has not testified on that subject, there is documentation from 1969 that appears to corroborate Poittrast's recollection. On August 29, 1969 -- the day on which Acting Governor Sargent signed the UMass/Boston appropriation bill -- O'Brien wrote to Poittrast (in a letter directed to the attention of BBC employee Joseph Surette) urging that a "coordinating designer" be hired "to assure coordination of design of site and buildings, to handle consultant contracts such as those for borings which all designers will need, and to keep design and construction on schedule and within the overall budget...."⁷⁷ O'Brien appended a suggested Request For Proposals ("RFP"). That document called for wide-ranging services involving many different disciplines:

"General site development of campus site of approximately 70 acres. Consists of excavation & rough fill, all utility mains, main entry road, service and construction roads, general topographic survey and soil boring data.

"Phase I of the campus consists of six buildings with ancillary facilities.... Coordination for all University-wide circulation, services and facilities will be required. Also required will be supervision and coordination of work progress...."

For these multifarious services,⁷⁸ O'Brien listed an "estimated construction cost" of \$14,290,000 and a total "appropriation allocation" of \$15,400,000.

O'Brien's draft was adopted by the Designer Selection Board and incorporated verbatim into the DSB's Request For Proposals issued on September 23, 1969.⁷⁹

⁷⁷ Letter dated August 29, 1969 from Francis E. O'Brien, Jr. to BBC Director Walter J. Poittrast (to the attention of Joseph Surette).

⁷⁸ The scope of these services was far broader than anything that MBM had ever done or, apparently, had ever even considered doing. While McKee and others from MBM had made speeches about project management (including cost estimating, cost control, computerized scheduling (CPM), design review, and coordination) MBM had never, so far as the Commission can determine, considered undertaking non-management work such as excavation, road-building, and land-filling. See McKee testimony, P.A. 3/22/78 at 11-17. It would seem highly unlikely, therefore, that O'Brien conceived the idea of having an outside "coordinating designer" and drafted the suggested request for proposals as a result of conversations with either MBM salesman Martin Heyman or Heyman's rival, MCM salesman William F. Harding, notwithstanding the testimony of Heyman and Harding. Heyman testimony, P.A. 3/22/78 at 142-43; see also Heyman testimony, P.A. 3/6/78, at 5-6; McKee testimony, Sp. Comm. 6/26/80 at 36-37; Harding testimony, Sp. Comm. 6/4/80 at 21-22.

⁷⁹ See discussion at text accompanying notes 95-96, infra.

MBM's Initial Awareness of the Potential
UMass/Boston Project Management Contract

It appears that MBM first heard about the potential UMass/Boston project management contract late in August of 1969, at a time when the appropriation bill either had just been passed by the Legislature or was about to be passed by the Legislature.⁸⁰ This conclusion results from two considerations: (1) documents written by Heyman in 1969, and (2) the lack of any documentary references -- either in Mansueto's diaries, Heyman's reports, or elsewhere -- indicating earlier awareness by anyone from MBM of a potential project management contract for UMass/Boston.

The first mention of the UMass/Boston project contained in any MBM document available to the Commission appears in an "Inquiry Notice and Contact Report" dated August 27, 1969 and filed by Martin Heyman. Heyman submitted such reports to Mansueto in order to alert the MBM "home office" in New York of significant new contracts that Heyman had learned about and decided to pursue.⁸¹ Heyman usually submitted such a report when he made the first contact in reference to a significant contract; follow-up reporting normally was done by less formal means.⁸²

The August 27, 1969 report reflected a meeting at Boston's City Hall with David Weiner, then the assistant director of operations and public services for the Boston Redevelopment Authority ("BRA"). Although the purpose of Heyman's meeting with Weiner apparently was to discuss services that MBM could provide for the BRA, Heyman noted that Weiner "will call Frank O'Brien -- head of planning at UMass Boston -- for mtg on Columbia Pt. Project."⁸³

On September 8, 1969 Heyman met with O'Brien and with O'Brien's assistant,

⁸⁰ MBM Vice President Anthony Mansueto recalled having heard about the potential UMass/Boston project management contract as early as the spring of 1969 (Mansueto testimony, 5 M/M 2/16/79 at 97-98); but his memory appears incorrect, for the reasons discussed in this section.

⁸¹ Id. at 152-155.

⁸² Id. at 155.

⁸³ Inquiry Notice and Contact Report dated August 27, 1969, initialed M.H.H. [Martin H. Heyman].

Willard W. Prince.⁸⁴ Heyman sent an Inquiry Notice and Contact Report about this meeting to Mansueto. The wording of the report suggests that Heyman had not previously filed such a report about the UMass/Boston project.⁸⁵ In the September 8, 1969 report, Heyman wrote:

"[The] Legislature in providing funds [for the UMass/Boston project] stipulated that: (1) project must come under supervision of BBC + (2) that BBC must set aside personnel to work on this project only, that they may utilize temp. personnel and utilize outside services.

"UMass would prefer direct control of the project. Failing that, they have requested the BBC to issue RFP's for arch[itects] for the] six bldgs. in Ph[ase] I plus coordinating arch[itect]/eng[ineer] who will design site utilities, civil, review arch[itect]'s concepts + tie together, and utilize scheduling, cost control, etc. during design + construction."

In his report, Heyman also explained the possible fee: "Phase I allocation for coordinating and control eng/arch is 15.3 M [of which the] estimated construction value to be designed [is] 14.2 M [leaving a] fee remaining [of] 1.1M for Phase I." This relates two numbers contained in the suggested RFP that O'Brien had sent to Poitras and Surette of the BBC on August 29, 1969. O'Brien had listed an "appropriation allocation" of \$15,400,000 and an "estimated construction cost" of \$14,290,000.⁸⁶ After discussing the UMass/Boston project with O'Brien, Heyman understood the fee for the project management work, as such, to be approximately \$1,110,000 (i.e., the difference between \$15,400,000 and \$14,290,000); the site development and other related work would consume the other \$14,290,000.⁸⁷

⁸⁴ Inquiry notice and contact report dated September 8, 1969, initialed M.H.H. [Martin H. Heyman], marked "To: A.E.M. [Anthony E. Mansueto]."

⁸⁵ Heyman testified to the Post Audit Subcommittee that he "ha[d] a feeling that there was probably an earlier [report]" that he filed about the UMass/Boston project. Heyman testimony, P.A. 3/22/78 at 155. He gave no reason for that "feeling", and perhaps he was thinking about the report he had filed about his meeting with Weiner -- which was not made available to the Post Audit Subcommittee, so far as the Commission can determine. Also, despite Heyman's testimony to the Post Audit Subcommittee (Heyman testimony, P.A. 3/6/78 at 5-6) that he had many meetings with O'Brien and Prince before the formal RFP was issued on September 23, 1969, O'Brien and Prince remember only this meeting with Heyman. Notes of 6/13/80 interview of Francis E. O'Brien, Jr. by Special Commission staff, at 3. Notes of 5/6/79 interview of Willard W. Prince by Special Commission staff, at 3.

⁸⁶ O'Brien 8/29/69 letter to Poitras supra n. 77.

⁸⁷ Heyman 8/21/80 interview.

Thus, UMass/Boston was seeking a "coordinating architect/project manager" -- which it felt could be a single firm -- yet MBM was qualified at most for the much smaller part of the total contract.⁸⁸ Unless the "coordinating architect/project manager" contract were to be divided into two separate contracts, therefore, MBM would presumably have been ineligible to bid for it on its own.

There was, however, a way in which MBM could submit a bid for the project management work, even if the contract were not split into two parts: by participating in a joint venture with a firm which was capable of doing the design, engineering, and contracting for the site development, while MBM could do the project management. MBM had participated in a joint venture in Thailand with an architectural/engineering firm named Seelye Stevenson Value & Knecht ("SSVK"),⁸⁹ and Heyman suggested a similar joint venture for the UMass/Boston project. In his September 8, 1969 report to Mansueto, Heyman wrote, in the space for "follow up or action to be taken," that a "mtg. will be scheduled with Walter Poitras of BBC to determine if RFP will be sent. If so will he entertain a proposal from us. Presumably MBM/SSVK J/V [joint venture]."

Issuance of the Formal
Request for Proposals
by the Designer Selection Board

MBM salesman Heyman met with Acting BBC Director Walter Poitras on September 18, 1969.⁹⁰ According to Heyman's written report of the meeting, the "project(s) discussed" were:

"Use of a more formal estimating procedure for archts under BBC commissions with special emphasis on UMass Columbia Point as a pilot program. He likes the IBA approach.

"Briefly discussed Phase II of the ADP program which we bid in the spring. He says we are still considered."

⁸⁸ Id. See also n. 78, supra.

⁸⁹ McKee testimony, Sp. Comm. 6/26/80 at 134-135.

⁹⁰ Inquiry Notice and Contact Report dated September 18, 1969, initialed M.H.H. [Martin H. Heyman]; see letter dated September 24, 1969 from Martin H. Heyman to Francis E. O'Brien, Jr., concerning project management.

Heyman noted that MBM was currently doing work for the BBC⁹¹ and that Poittrast "says he likes to use outside consultants (unlike his predecessor)." Although Heyman expressed "doubt [that Poittrast] will make many innovative moves until he becomes permanent director [of the BBC]," Heyman wrote that "we [MBM] will submit qualifications to the Designer Selection Board by Oct. 7 for program [sic] management services on UMass (Columbia Point)."

A project management firm apparently could have been chosen for UMass/Boston without the participation of the DSB.⁹² Poittrast testified to the Post Audit Subcommittee in 1978 that he could have made a selection (for ratification by the A&F Commissioner) without seeking the guidance of the DSB.⁹³ Poittrast said, however, that he chose to utilize the DSB because "it was a large contract, a large responsibility, [and] I had decided that it should go through the Design[er] Selection Board in order to use the expertise of the Board in helping me select ... three firms."⁹⁴

On September 23, 1969 the DSB issued a formal RFP for "coordination and administration of Phase I of new campus, engineering design and limited architectural design, bid plans and specifications, and supervision of construction."⁹⁵ The description of the scope of work was verbatim what Frank O'Brien of the UMass/Boston planning office had suggested on August 29, 1969.⁹⁶ The DSB stated that it had not prequalified the category of designer that might be considered for the project, and it added that it was reserving its statutory right to recommend to the A&F Commissioner that the contract be subdivided between a project management firm and an architectural/engineering firm.

⁹¹ Heyman 9/18/69 inquiry notice and contact report.

⁹² P.A. Report, at 15.

⁹³ Poittrast testimony, P.A. 3/21/78 at 9.

⁹⁴ Id.

⁹⁵ Designer Selection Board List Number 70-1 Item 20, public notice dated September 23, 1969, at 1.

⁹⁶ O'Brien 8/29/69 letter to Poittrast.

The RFP called for applications to be received by October 7, 1969.⁹⁷

The day after the RFP was issued, MBM salesman Heyman wrote to Frank O'Brien of UMass/Boston thanking O'Brien for the O'Brien-Prince-Heyman meeting earlier in the month and expressing MBM's intention to submit a proposal for the UMass/Boston management contract.⁹⁸

MBM, along with approximately fifty (50) other firms,⁹⁹ submitted a proposal before the October 7, 1969 deadline. On October 8, 1969 the DSB decided to exercise its option to split the contract into two contracts -- one for project management, and the other for site development.¹⁰⁰ The site development contract -- by far the larger of the two -- was awarded on October 27, 1969 to Charles T. Main, Inc.¹⁰¹ The Commission has not looked into that contract, and it will not be considered further in this report.

97 DSB List Number 70-1 Item 20, supra n. 95.

98 Heyman 9/24/69 letter to O'Brien supra n. 90.

99 List of firms responding to Project U67-4 #2, Item 20, prepared for Designer Selection Board Meeting of October 15, 1969.

100 See minutes of UMass/Boston Planning and Development Committee meeting of October 10, 1969, at 1, containing a report about the October 8, 1969 DSB meeting. (Minutes of the DSB's 65th regular meeting of October 8, 1969 did not record this decision.)

101 Letter dated October 27, 1969 from Donald R. Dwight to Walter Poitras, concerning the appointment of certain designers.

MBM's Decision to
Have Former Governor
Endicott Peabody Assist
in MBM's Efforts to
Obtain the UMass/Boston Contract

The UMass/Boston project management contract was extraordinarily attractive to MBM. In addition to the large fee, MBM was interested in the visibility and prestige likely to result from winning this first major project management contract to be awarded by any governmental agency in the United States.¹⁰²

MBM's officers recognized that certain realities had to be confronted if MBM were to have any realistic chance of winning the UMass/Boston contract. First, although MBM had opened a small office on Newbury Street in Boston, MBM still was basically a New York company. It recognized that preference might well be given to Massachusetts firms or firms perceived as having permanent and substantial stakes in Massachusetts.¹⁰³ Second, although MBM may have been one of the first firms to conceive of linking various services into a single package of "project management services,"¹⁰⁴ MBM did not have much of a track record in providing the full panoply of comprehensive project management services on a single project.¹⁰⁵ In fact, McKee has testified that "no one had" offered the entire package of services on a single project before the Columbia Point project.¹⁰⁶ Moreover, MBM was not equipped to handle the UMass/Boston project with its present staff; it would have to hire most of the employees that would be necessary if it won the job.¹⁰⁷ Finally, MBM was aware of the political tinge

¹⁰² McKee testimony, Sp. Comm. 6/26/80 at 8.

¹⁰³ Heyman testimony, P.A. 3/6/78 at 24-25.

¹⁰⁴ McKee testimony, P.A. 3/22/78 at 11-17. During McKee's testimony before the Special Commission, Commissioner Walter J. McCarthy suggested that project management was already widely used in the private sector as of 1969. See Sp. Comm. 6/26/80 at 26-30.

¹⁰⁵ Mansueto testimony, P.A. 5/23/78 at 34.

¹⁰⁶ McKee testimony, 6 DiC 2/1/77 at 80-81.

¹⁰⁷ See MBM personnel listing, corporate headquarters and New York office, dated November 10, 1969; BBC memorandum dated December 17, 1969 from Edmund McAdam to Design[er] Selection Board, concerning the selection of a project management consultant for UMass/Boston, at 2.

to contract awarding in Massachusetts. Frank Masiello had discussed the political realities with Mansueto and made the necessary political introductions for Mansueto during both the Peabody administration and the Volpe administration.¹⁰⁸ But although Mansueto had been introduced to Albert Manzi,¹⁰⁹ and although Manzi had been a power in the Volpe administration,¹¹⁰ Manzi's position may have been viewed as somewhat tenuous in mid-1969, since Acting Governor Sargent was replacing many of Volpe's key people with individuals closer to Sargent.¹¹¹

MBM's disadvantages of (a) being from New York, (b) being small and relatively inexperienced in the field, and (c) not clearly having top-level political connections to the Sargent administration were accentuated because of the nature of the UMass/Boston project management contract. Here was a contract in a field that was so new¹¹² that even the Designer Selection Board was unclear about the nature of the services required, as indicated in the DSB's ill-defined Request For Proposals.¹¹³ The contract promised to be extremely lucrative, and there was virtually no upper limit on its potential size: it was not an "architectural" contract, so the statutory table of fees for architects did not apply,¹¹⁴ nor was it a general-contractor-type "construction" contract, so the "lowest responsible bidder" law was not applicable.¹¹⁵ Moreover, there were no established criteria by which performance under the contract by the winning firm would be measured; it would be responsibility of the architects,

¹⁰⁸ See discussion in Chapter III, supra.

¹⁰⁹ Id.

¹¹⁰ Id. See also the section on A New Campus for Holyoke Community College, elsewhere in this Final Report.

¹¹¹ Notes of 1/6/80 interview of M. Joseph Stacey by Special Commission staff, at 4.

¹¹² McKee testimony, 7 DiC 2/2/77 at 30, 40.

¹¹³ See discussion supra.

¹¹⁴ Testimony of Walter J. Poitras, P.A. 2/15/78 at 122-123.

¹¹⁵ G.L. c.149 s.44A.

engineers, and contractors to design and build the university so that it functioned adequately,¹¹⁶ and the only clearly defined assignment for the project manager¹¹⁷ would be to assist in meeting a schedule that virtually everyone agreed was unattainable¹¹⁸ -- and for which there would be no penalty to the project manager if it were not met.¹¹⁹ In sum, if there were ever a contract that could be awarded and even have its fee set on a purely discretionary basis, this was it.

It was in this context that MBM engaged former Governor Endicott Peabody to assist in MBM's efforts to win the UMass/Boston project management contract. Peabody knew both Acting Governor Sargent and A&F Commissioner Donald Dwight, having appointed both to be Commissioners of the Department of Public Works in 1964.¹²⁰ He also knew officials at the University of Massachusetts and at the ABC,¹²¹ the agencies whose votes would be most powerful on the Designer Selection Board -- the hurdle that would have to be cleared in order for a firm to be among those eligible to be selected by A&F Commissioner Dwight. It is not completely clear just how MBM and Peabody actually came together in 1969. Frank Masiello told the Commission that he remembered hearing from Peabody in early 1969 that Peabody was representing MBM.¹²² Masiello dated the conversation by reference to Masiello's retaining Peabody for an unrelated matter in February 1969.¹²³ Masiello recalled the conversation as occurring in February or early March 1969 during lunch following a meeting in Peabody's Washington office.¹²⁴

¹¹⁶ McKee testimony, Sp. Comm. 6/26/80 at 4-6.

¹¹⁷ Id. at 5.

¹¹⁸ Poitras testimony, P.A. 2/15/78 at 113-116.

¹¹⁹ Id. at 114.

¹²⁰ Sargent testimony, P.A. 6/7/78 at 53-54; Testimony of Donald R. Dwight, P.A. 3/15/78 at 5-7; Testimony of Endicott Peabody, 8 DiC 2/3/77 at 60; Sp. Comm. 6/19/80, at 101.

¹²¹ Peabody testimony, Sp. Comm. 6/19/80 at 9-13.

¹²² Notes of 2/7/80 interview of Frank R. Masiello by Special Commission staff, at 11.

¹²³ Id. at 10-11. Peabody testimony, Sp. Comm. 6/19/80 at 21-22.

¹²⁴ Frank Masiello 2/7/80 interview, at 11-12.

However, the earliest MBM document available to the Commission making reference to the Peabody law firm is a memorandum from Anthony Mansueto to Gerald McKee, dated July 1, 1969.¹²⁵ In the memo, Mansueto related a telephone conversation he had had that morning with Jeremiah Lambert. Lambert was a Washington, D.C. lawyer whom MBM had engaged in 1968 to help MBM in regard to federal contracts.¹²⁶ Mansueto reported that Lambert was considering joining the law firm of "Peabody (former Governor of Massachusetts)" but that Lambert "did not know whether he would join this office and would not know for three or four weeks." There was no indication in Mansueto's memo whether MBM had already retained or was planning to retain Peabody personally if Lambert did not join Peabody's firm.

On July 17, 1969, Lambert wrote directly to McKee that "[it] now seems very likely [that] I [will] join the Peabody firm.... I would expect that I will join my new firm by August 18, [1969]."¹²⁷ Finally, on August 20, 1969, Lambert wrote a letter to McKee¹²⁸ which said, in part:

"As Tony [Mansueto] and I discussed today, I have completed arrangements for joining my new law firm, which will be known as Peabody, Rivlin, Kelly, Cladouhos and Lambert. I expect to join the firm officially as of September 1....

. . . .

"I also mentioned to Tony that Endicott Peabody might be of great help to MBM, particularly in Massachusetts and with regard to federal government matters. I would very much hope that...we can continue our relationship after I join my new firm."

Lambert did join Peabody's firm on September 1, 1969.¹²⁹ Approximately three weeks later, MBM learned that Massachusetts had definitely decided to use an outside project management firm, at a substantial fee, in connection with the UMass/Boston project. Peabody began working actively to try to help MBM win the UMass/Boston contract about one week after that.

125 Memorandum dated July 1, 1969 from Anthony E. Mansueto to G[erald] McKee, [Jr.] re: "Telephone conversation with Jerry Lambert."

126 Testimony of Jeremiah D. Lambert, Sp. Comm. 6/18/80 at 7-9.

127 Letter dated July 17, 1969 from Jeremiah D. Lambert to Gerald McKee, [Jr.].

128 Letter dated August 20, 1969 from Jeremiah D. Lambert to Gerald McKee, Jr.

129 Peabody testimony, P.A. 3/7/78 at 98.

The Fee Arrangement
between MBM and the Peabody Firm

Contemporaneous documents¹³⁰ and testimony of Jeremiah Lambert¹³¹

indicate that MBM's initial agreement with the Peabody law firm (effective September 1, 1969) called for MBM to pay a retainer of \$800 per month, plus reimbursement of out-of-pocket expenses (e.g., travel, postage, photocopying) incurred on MBM's behalf by the Peabody firm. This was a continuation of the fee arrangement that had existed between MBM and Lambert's prior firm.¹³²

A special fee agreement was superimposed on top of the \$800 monthly retainer, however, to compensate the Peabody firm for assistance in regard to the UMass/Boston contract. Although MBM continued to pay a monthly retainer, MBM also agreed to pay to the Peabody firm a percentage of whatever MBM ultimately received from the Commonwealth on the UMass/Boston contract.¹³³ Pursuant to that agreement, MBM paid \$22,500 to the Peabody firm for help in obtaining the UMass/Boston contract for MBM.¹³⁴

The precise fee arrangement between MBM and the Peabody firm was a subject that the Post Audit Subcommittee considered important and was unable to resolve.¹³⁵ Since the matter has significant ramifications, the Commission continued the inquiry that the Post Audit Subcommittee had begun into the matter. Rather than interrupt the present narrative relating to MBM's acquisition of the UMass/Boston contract, the detailed discussion of the evidence relating to the Peabody's firm's fee is not contained here but instead will be found in Appendix A following this Final Report on MBM.

¹³⁰ Statements dated September 30, 1969, October 31, 1969, November 25, 1969, December 26, 1969 from the Peabody law firm to MBM; memorandum dated December 26, 1969 from Jeremiah D. Lambert to "Jack" [presumably MBM comptroller Jack Lifschitz].

¹³¹ Testimony of Jeremiah D. Lambert, Sp. Comm. 6/18/80 at 25-28.

¹³² Id. at 25-26.

¹³³ Memorandum dated February 17, 1970 from "Gov. Peabody" to "Mr. Lambert," re: "MBM Fee - University of Massachusetts."

¹³⁴ Letter dated June 7, 1978 from Jeremiah D. Lambert to Charles R. Nesson.

¹³⁵ See, e.g., letter dated June 6, 1978 from Charles R. Nesson [counsel to the Post Audit Subcommittee] to Morris Goldings [counsel to Peabody-Lambert].

The October 1, 1969 Meeting of
Peabody and MBM's Officers Regarding
the UMass/Boston Contract

The first meeting of Endicott Peabody with MBM officials regarding the UMass/Boston contract apparently took place on October 1, 1969 -- one week after the Designer Selection Board issued the Request for Proposals. The Peabody-MBM meeting took place in New York and was attended by Peabody, Lambert, McKee, and Mansueto.¹³⁶

McKee described for Peabody the types of work that MBM had done in the past and was hoping to do in the future. With that background, McKee explained the significance of the proposed UMass/Boston project management contract and the opportunity it could represent for MBM.¹³⁷ McKee then expressed his concern that the contract might not be awarded solely on the merits. McKee feared that MBM might be at a disadvantage because MBM was not well known in Massachusetts.¹³⁸ Accordingly, McKee asked Peabody, a former Governor of Massachusetts, to speak to people involved with the contract award process to insure that MBM's application would be taken seriously.¹³⁹

Peabody knew, according to his own testimony, that a firm seeking a state contract in Massachusetts could enhance its chances by making or pledging to make significant "contributions" to politicians in power.¹⁴⁰ This was, in Peabody's view, perfectly proper and even commendable.¹⁴¹ But Peabody testified to the Commission that he did not discuss this with MBM in 1969 because 1969 was not a gubernatorial election year.¹⁴²

¹³⁶ Peabody testimony, P.A. 3/7/78 at 98.

¹³⁷ Id. at 98-101.

¹³⁸ Id. at 100-101.

¹³⁹ Peabody testimony, Sp. Comm. 6/19/80 at 26; P.A. 3/7/78 at 101.

¹⁴⁰ Peabody testimony, Sp. Comm. 6/19/80 at 10-14.

¹⁴¹ Id. at 10-11.

¹⁴² Id. at 154-156.

In any event, Peabody agreed to help MBM in its attempt to win the UMass/Boston contract.¹⁴³ On October 2, 1969 -- the day after the New York session -- Peabody met in Boston with people associated with UMass and with officials of the state Bureau of Building Construction ("BBC"). To put those meetings into perspective, it may be helpful first to consider the roles of UMass and the BBC in the contract award process.

The Formal Procedure by Which
the UMass/Boston Project Management
Contract Was to Be Awarded

State building-related contracts in Massachusetts were awarded by three different procedures in 1969, with the type of contract determining the procedure applied: (1) For architectural contracts, competing firms were screened by the state's Designer Selection Board ("DSB") which then chose three finalists and forwarded those firms' names to the Commissioner of Administration & Finance ("A&F") who selected the winner.¹⁴⁴ The winning architect's fee was normally set by the rather mechanical process of consulting a statutorily mandated fee schedule which determined the amount of the fee based upon the type and estimated construction cost of the building. (2) For construction contracts, a "lowest responsible bidder" system was used. The detailed plans and specifications prepared by the architects were made available to interested contractors who then submitted bids. Whichever qualified contractor submitted the lowest bid received the contract.¹⁴⁵ (3) Engineers and other consultants were generally selected by

¹⁴³ Peabody testimony, P.A. 3/7/78 at 101; Sp. Comm. 6/19/80 at 24.

¹⁴⁴ G.L. c.7 s.30B.

¹⁴⁵ G.L. c. 149 s. 44A.

the BBC, often upon the architects' recommendation. Their fees were negotiated and had to be approved by the A&F Commissioner.¹⁴⁶

Massachusetts had never used project management on a state building project as of 1969. Thus, there may have been some doubt about which contract-awarding procedure was appropriate for the UMass/Boston project management contract. Although the BBC apparently could have awarded the contract directly as a consulting contract,¹⁴⁷ Acting BBC Director Walter J. Poitrast did not make the selection himself. Instead, the DSB-A&F procedure established for architect selection was used.¹⁴⁸ Thus, the choice of the UMass/Boston project manager was made directly by A&F Commissioner Donald R. Dwight from among three finalists designated by the DSB.

The Designer Selection Board in 1969 involved seven participants. The Governor appointed five members, of whom two had to be architects and two engineers. A sixth participant was the BBC Director who served ex officio and had a vote. The seventh spot was more fluid, being filled in regard to any particular contract by a representative from the "user agency" for the contract in question -- i.e., the agency for which the project was to be built.¹⁴⁹ After the DSB was provided with a contract description by the BBC, it would advertise the contract by means of a Request for Proposals ("RFP"), attempt -- without any staff or budget -- to screen the applicants, and then select three finalists.

Although the seven DSB participants had equal voting power,¹⁵⁰ they normally

146 G.L. c.29 s.29A.

147 Poitrast testimony, P.A. 3/21/78 at 9.

148 Id.

149 G.L. c.7 s.30B.

150 Id.

did not have equal interest or information. The user agency and the BBC would have to work with the contract winners and live with the buildings produced. Accordingly, the user agency and the BBC often took it upon themselves to gather information about the firms applying for contracts. Since the other DSB members had no direct stake in the projects and had no support staff to develop detailed independent data, they normally voted to include at least the first choice of the BBC and the first choice of the user agency among the three finalists. Indeed, this was virtually always their practice.¹⁵¹

Thus the two votes that really "mattered" on the DSB were those of (1) the user agency -- in this case the University of Massachusetts -- and (2) the BBC. And the DSB "hurdle" had to be surmounted if a firm were to have a chance of being selected by the A&F Commissioner.

These facts presented problems for MBM, since MBM was not in a particularly strong position with either the BBC or the University of Massachusetts. MBM had received only a few small cost-estimating contracts through the BBC.¹⁵² Moreover, the only BBC official who had been cultivated to any degree by MBM (via Mansueto) was James Cusack¹⁵³ and, although it had been widely expected that Cusack would become BBC Director,¹⁵⁴ he had recently lost out to Walter

¹⁵¹ See P.A. Report, at 16.

¹⁵² See "Partial List of MBM Contracts in Massachusetts - Public & Private 1964-1969," prepared by Commission Staff from MBM job cards, introduced as McKee Exhibit 2A, Sp. Comm. 6/26/80 at 21.

¹⁵³ See discussion in Chapter III, supra.

¹⁵⁴ Id.

Poitrast.¹⁵⁵ To make matters even worse for MBM in this regard, Poitrast was bitter that Frank Masiello had supported Cusack for BBC Director,¹⁵⁶ and Frank Masiello was well known at the BBC as MBM's early sponsor.¹⁵⁷ As for UMass, MBM apparently had not done any prior work for UMass (not even on the Amherst campus), and when MBM salesman Martin Heyman met on September 8, 1969 with UMass planning officials Francis O'Brien and Willard Prince, they simply referred Heyman to the BBC.¹⁵⁸

Fortunately for MBM, Endicott Peabody knew officials at both the BBC and the University of Massachusetts, since Peabody had dealt with both institutions when Peabody was Governor of Massachusetts. And on October 2, 1969 -- the day after Peabody's meeting with McKee and Mansueto in New York -- Peabody introduced Mansueto and Heyman to representatives of UMass and of the BBC.

Peabody's Early Contacts
With UMass Officials

On October 2, 1969, Endicott Peabody introduced MBM's Mansueto and Heyman to two people connected with the University of Massachusetts. They met over lunch at Locke-Ober's in Boston.¹⁵⁹ The people connected with UMass were Morris M. Goldings, counsel to the UMass Building Authority, and Robert D. Gordon, a

¹⁵⁵ Poitrast was named Acting Director on September 2, 1969 and Director on December 5, 1969. See letter dated December 5, 1969 from Donald R. Dwight to Francis W. Sargent, requesting approval of the appointment of Poitrast as BBC Director.

¹⁵⁶ Notes of 1/2/80 interview of William V. Masiello by Special Commission staff, at 12; see notes of 5/8/79 interview of Willard W. Prince by Special Commission staff; Heyman 6/26/79 interview at 4.

¹⁵⁷ See notes of 7/24/79 interview of Anthony E. Mansueto by Special Commission staff, at 1.

¹⁵⁸ See discussion supra.

¹⁵⁹ Mansueto pocket diary 10/2/69; Heyman testimony, P.A. 6/9/78 at 102.

trustee of the University who had been appointed to that position by Peabody when Peabody was Governor.¹⁶⁰

During the luncheon meeting on October 2, 1969 Peabody spent some time speaking on MBM's behalf. Peabody's performance convinced MBM salesman Heyman that Peabody would be a strong advocate for MBM.¹⁶¹

Gordon and Goldings were friendly and said they would make others at UMass aware of MBM's interest and services.¹⁶² They pointed out, however, that they would not be directly involved in the decision-making process. Accordingly, they suggested that Peabody see William R. ("Roy") Hamilton, Jr., the UMass/Boston Vice Chancellor who had been designated to serve as the voting representative of UMass on the Designer Selection Board.¹⁶³

Shortly after the October 2, 1969 lunch, Peabody obtained a copy of the minutes of the September 1969 meeting of the UMass Board of Trustees' Committee on Buildings & Grounds at which the Committee had decided to recommend that Hamilton be designated as the University's voting representative to the DSB on matters relating to UMass/Boston. On the top of the first page of the document, in what appears to be Peabody's handwriting, is the notation "Roy Hamilton UM Boston" with a box drawn around it. According to Peabody, these minutes and the minutes of at least one other such meeting were furnished to him by Robert Gordon.¹⁶⁴ Gordon, in an interview with Commission staff, denied giving these or other internal UMass documents to Peabody.¹⁶⁵

¹⁶⁰ Testimony of Endicott Peabody, Sp. Comm. 6/19/80 at 43.

¹⁶¹ Heyman testimony, P.A. 6/9/78 at 104-105.

¹⁶² Notes of 6/26/79 interview of Martin H. Heyman by Special Commission staff, at 7-8.

¹⁶³ Notes of 10/3/78 interview of Morris M. Goldings by Special Commission staff at 3; Minutes of Meeting of [University of Massachusetts] Committee on Buildings and Grounds: September 18, 1969, at 2.

¹⁶⁴ Peabody testimony, Sp. Comm. 6/19/80 at 42-43.

¹⁶⁵ Notes of 8/9/79 interview of Robert D. Gordon by Special Commission staff, at 2.

Peabody sent copies of the minutes to Mansueto. In a cover letter dated October 7, 1969, Peabody cautioned Mansueto to "treat the minutes as confidential."¹⁶⁶ Peabody also wrote:

"I am glad we had lunch together last Wednesday and Thursday. It was important for you to meet Robert Gordon, a trustee of the University, and Morris Goldings, who is counsel for the State College Building Authority and the University of Massachusetts Building Authority."

The Commission has no evidence of any direct meetings between Peabody (or MBM salesmen) and Hamilton. However, Peabody did have further contact with Gordon before the award of the UMass/Boston contract to MBM.¹⁶⁷ As discussed below, UMass eventually did give MBM its first-place vote in the DSB balloting for UMass/Boston project manager.

Peabody's Early Contacts
With BBC Officials

On October 2, 1969 (the same day as the Gordon-Goldings meeting) Endicott Peabody accompanied MBM salesman Heyman -- and possibly also Mansueto ¹⁶⁸ -- to a meeting with Acting BBC Director Walter Poittrast.¹⁶⁹ Heyman had -- just two weeks earlier -- met with Poittrast and discussed the UMass/Boston contract.¹⁷⁰ And Poittrast had already approved MBM for some small estimating contracts.¹⁷¹

According to Heyman, the meeting began with Peabody explaining to Poittrast that Peabody was representing MBM. Peabody then deferred to Heyman (and possibly

¹⁶⁶ Letter dated October 7, 1969 from Endicott Peabody to Anthony E. Mansueto.

¹⁶⁷ See discussion infra. Gordon told the Commission that he had no recollection of such contacts. See Gordon 8/9/79 interview at 1, 3.

¹⁶⁸ The appointment appeared in Mansueto's pocket diary, with a notation changing it from 2 PM to 4 PM. Mansueto pocket calendar for 10/2/69. But neither Mansueto nor the other participants recalled Mansueto's presence. Mansueto testimony, P.A. 6/9/78 at 86; Poittrast testimony, P.A. 3/21/78 at 50; see letter dated October 7, 1969 from Endicott Peabody to Anthony E. Mansueto.

¹⁶⁹ Peabody testimony, P.A. 3/7/78 at 101; Poittrast testimony, P.A. 3/21/78 at 50.

¹⁷⁰ See discussion supra.

¹⁷¹ See discussion supra.

Mansueto), who engaged in more substantive discussion.¹⁷²

Heyman felt that Peabody's presence served at least one useful purpose: imparting "stature" and "clout" to MBM.¹⁷³ Heyman further testified that MBM needed all the help it could get. According to Heyman, it would have been difficult for MBM to win the UMass/Boston contract on merit alone for three reasons: (1) the eminence of certain other firms (Turner Construction Company and Jackson & Moreland) that had applied for the contract; (2) the fact that the competing firms had been established far longer in Massachusetts; and (3) the problem of adequately conveying the technical aspects of the services that MBM was offering.¹⁷⁴

Peabody had further contact with Poittrast. On October 27, 1969 Peabody spoke again with Poittrast on MBM's behalf.¹⁷⁵ Two days later, Peabody wrote a letter to Poittrast's administrative assistant, Frederick J. Kussman. In addition to being a BBC official, Kussman also served as executive secretary of the Designer Selection Board.¹⁷⁶ Peabody's letter to Kussman¹⁷⁷ began:

"Dear Fred: When I was in Boston last, I attempted to reach you unsuccessfully. I hope that we can get together when I come to Boston again very shortly."

After mentioning that MBM had "a very impressive record" and was "extremely anxious" to be considered for the UMass/Boston project, Peabody concluded the letter by congratulating the BBC for handling an increased workload with a staff not much larger "than the [staff] which existed when I was Governor." The letter was signed "Chub Peabody." A blind copy of the letter, signed "Chub," was sent to Anthony Mansueto, who forwarded copies to Jack Thomas and Martin Heyman. A copy of the original signed letter was also sent to Gerald McKee, who forwarded copies to Mansueto and Heyman.

On November 13, 1969 Peabody met in Boston with Poittrast and Kussman.¹⁷⁸ Peabody telephoned his partner Jeremiah Lambert after the meeting, and Lambert thereupon wrote a letter, also on the same day, reporting to MBM President McKee on Peabody's meetings with Poittrast and Kussman. The letter stated that Peabody

¹⁷² Heyman 8/23/80 affidavit, at 1.

¹⁷³ Heyman testimony, P.A. 3/6/78 at 23-24.

¹⁷⁴ Id. at 24-26.

¹⁷⁵ Peabody testimony, P.A. 3/7/78 at 102; Peabody law firm MBM tub card I.

¹⁷⁶ Testimony of Frederick J. Kussman, P.A. 3/23/78 at 136.

¹⁷⁷ Letter dated October 29, 1969 from Endicott Peabody to Fred[erick J.] Kussman.

¹⁷⁸ Peabody testimony, P.A. 3/7/78 at 104. Kussman has testified that he did not meet with Peabody in 1969 regarding MBM. Kussman testimony, P.A. 3/2/78 at 104.

"understands that MBM is favored as the choice for inhouse consultant [on the UMass/Boston project]. Chub cautioned that this is a preliminary indication only and must be confirmed through normal administrative channels, but it is in any event a very hopeful sign."¹⁷⁹

Peabody had further contact with Poitras and Kussman, as discussed below.

Activities by MBM Officials
During October and November 1969

On October 2, 1969 -- the same day as the meetings with Gordon/Goldings and Poitras -- Anthony Mansueto had another meeting in Boston which he apparently attended without the accompaniment of Peabody or Heyman. This other meeting was with Albert P. Manzi, the Republican fundraiser.¹⁸⁰ Manzi, as discussed elsewhere in this Final Report, helped several firms obtain state building-related contracts in return for "political contributions" -- or commitments to make such "contributions" -- by those firms.¹⁸¹ Mansueto had met Manzi in 1967 through Frank Masiello and presumably was aware, by 1969, of Manzi's influence and methods.¹⁸² In March 1969 Manzi had personally introduced Mansueto (and Heyman) to A&F Commissioner Donald Dwight in connection with other work that MBM was then seeking.¹⁸³ Now that MBM had decided to make an all-out effort to obtain the UMass/Boston contract -- which would be awarded ultimately by Dwight -- Mansueto felt it appropriate to see Manzi.

The October 2, 1969 meeting between Mansueto and Manzi took place at Manzi's office at the Massachusetts Turnpike Authority suite in the Prudential Center.¹⁸⁴ The Commission was unable to obtain testimony about this meeting from either Manzi or Mansueto because Manzi asserted his privilege against

¹⁷⁹ Letter dated November 13, 1969 from Jeremiah D. Lambert to Gerald J. [sic] McKee, Jr.

¹⁸⁰ Mansueto pocket calendar, 10/2/69; Mansueto pocket "month-at-a-glance" calendar and desk calendar for October 1969.

¹⁸¹ See the sections on A New Campus for Holyoke Community College, and the Joseph P. Gentile School, in Volume 3 of this Final Report.

¹⁸² See discussion in Chapter III supra.

¹⁸³ See discussion supra.

¹⁸⁴ See sources cited in n. 180 supra.

self-incrimination¹⁸⁵ and Mansueto refused to appear and testify before the Commission.¹⁸⁶ In 1979, at the Manzi-Masiello trial, Mansueto admitted that he met with Manzi on October 2, 1969 but testified that the meeting concerned Massachusetts business in general, not UMass specifically.¹⁸⁷

After October 2, 1969, Mansueto and Heyman do not appear -- from the documentary record available to the Commission -- to have had many more contacts with the BBC, UMass, DSB, or A&F until shortly before the UMass/Boston contract was awarded. Mansueto's rather detailed diaries, for example, contain merely an entry for October 17, 1969 reading "discuss Boston" and one for November 21, 1969 indicating an appointment with BBC Director Poitras.¹⁸⁸ As for Martin Heyman, he may have had one or two unscheduled and brief meetings with Frank O'Brien and Willard Prince of the UMass/Boston planning staff, but O'Brien and Prince do not recall such sessions.¹⁸⁹ Heyman said, in testimony to the Post Audit Subcommittee, that he had "done [his] homework with [Frederick] Kussman [of the BBC]"¹⁹⁰ but provided no specifics. Heyman later revealed, in an affidavit to the Commission, that he had a telephone conversation in 1969 with Kussman in which Kussman remarked that MBM had "powerful friends."¹⁹¹

¹⁸⁵ Testimony of Albert P. Manzi, Sp. Comm. 6/9/80 at 8.

¹⁸⁶ See Sp. Comm. 6/27/80 at 4-5.

¹⁸⁷ Mansueto testimony, 6 M/M 2/20/79 at 32, 35-40. In a separate but perhaps related matter, one of Mansueto's calendars for October 2, 1969 contained the entry: "Masiello re K." Mansueto "month-at-a-glance" calendar for October 1969. The Commission does not know whether the "Masiello" was intended to refer to Frank Masiello or William Masiello. Nor does the Commission know whether the "K" referred to the UMass/Boston contract" (since "K" is a common abbreviation for "contract") or to something or someone else.

¹⁸⁸ Mansueto pocket calendar for 10/17/69, 11/21/69.

¹⁸⁹ See Heyman 8/23/80 affidavit at 1; notes of 5/15/79 interview of Francis E. O'Brien, Jr. by Special Commission staff, at 6; notes of 6/13/80 interview of Francis E. O'Brien, Jr. by Special Commission staff, at 3; notes of 5/8/79 interview of Willard W. Prince by Special Commission staff, at 7.

¹⁹⁰ Heyman testimony, P.A. 3/6/78 at 18.

¹⁹¹ Heyman 8/23/80 affidavit at 2. Heyman says he called McKee in New York to report on this conversation, and McKee had Heyman report it directly to Peabody. Id.

As for MBM President McKee, he testified that he was not actively involved in the effort to win the UMass/Boston contract.¹⁹²

The Short-lived Seelye-McKee
Joint Venture Proposal

When MBM submitted its application to the Designer Selection Board on October 6, 1969,¹⁹³ it did so as the junior member of a proposed joint venture. MBM recognized that it was not capable of handling the site development and utility work which the DSB had linked with project management in the single Request for Proposals.¹⁹⁴ MBM's proposed joint venture partner was the engineering firm of Seelye Stevenson Value & Knecht ("SSV&K").¹⁹⁵ SSV&K and MBM had undertaken joint ventures before, most notably on a United States Air Force construction project in Thailand.¹⁹⁶ Although SSV&K apparently would have handled the UMass/Boston utility work without help from MBM, it was planned that personnel from both firms would participate in providing project management services.¹⁹⁷

At some point in October or November 1969, the Seelye firm dropped out of the proposed joint venture. No contemporaneous document explaining SSV&K's action has been found. It is possible that the SSV&K-MBM joint venture simply dissolved when the DSB decided to split what had been one contract into two contracts (with project management being separated from the site and utility work).¹⁹⁸ A different explanation was presented to the Commission in testimony by Stanley Davis, a former SSV&K employee.¹⁹⁹ Davis's testimony is discussed in Chapter V, below.

192 McKee testimony, P.A. 3/22/78 at 9-10. McKee did not provide the Commission with any of his diaries or expense reports from 1969, which might have been of interest on this point. The Commission was told that McKee had made such records available to Federal authorities in 1975, 1976 and/or 1977. Interview of Arnold Stream by Special Commission staff; Notes of 7/2/79 interview of Ralph Sealey by Special Commission staff, at 2.

193 See "Chronology of Selection, Appointment, Negotiations and Consummation of Contract No. 601, State Project No. U67-4 No. 2A," prepared by MBM in February of 1971. The microfilm of the Seelye-MBM proposal is missing from DSB records.

194 McKee testimony, P.A. 3/22/78 at 17.

195 Id.

196 Testimony of Stanley Davis, Sp. Comm. 5/29/80 at 21-22; McKee testimony, Sp. Comm. 6/26/80 at 134-135.

197 See undated document headed "Candidates for University of Massachusetts Project, Columbia Point," found in MBM's files.

198 See testimony of Earle F. Littleton, P.A. 3/1/78 at 19; McKee testimony, Sp. Comm. 6/26/80 at 135.

199 Testimony of Stanley Davis, Sp. Comm. 5/29/80 at 19-25.

The Interviews of
Five Semi-Finalists
By the Designer Selection Board

Although more than fifty firms applied for the UMass/Boston project management contract, most appeared clearly unqualified.²⁰⁰ Indeed, the DSB solicited additional applications for this reason.²⁰¹

In late November of 1969, the DSB decided to interview five of the firms.²⁰² Accordingly, the DSB interviewed MBM, Mauchly Associates, and Jackson & Moreland ("J&M") on December 3, 1969; and Turner Construction and Carl Morse, Inc. on December 10, 1969.²⁰³

MBM's presentation before the Designer Selection Board took place at 1:45 p.m. on December 3, 1969 and was made by Mansueto and Heyman. According to E. Edward Rossi, who was present at the meeting,²⁰⁴ the MBM representatives were "very slick" with a "fast sales pitch" and a "Madison Avenue show, complete with graphics, cards, and charts."²⁰⁵ According to UMass/Boston Planning Director Francis O'Brien, MBM's presentation correctly emphasized the time that could be saved by coordination during the pre-construction stages, an approach that O'Brien supported and that was not stressed by any of the other firms.²⁰⁶ The presentation by Jackson & Moreland left Rossi with the impression that the firm

²⁰⁰ Testimony of Earle F. Littleton, P.A. 3/1/78 at 18-19.

²⁰¹ Id.: Kussman testimony, P.A. 3/2/78 at 170; letter dated May 24, 1972 from Frederick J. Kussman to Joseph J.C. DiCarlo.

²⁰² P.A. Report at 26, citing minutes of 71st regular meeting of the Designer Selection Board, November 26, 1969.

²⁰³ P.A. Report at 26.

²⁰⁴ Notes of 9/11/79 interview of E. Edward Rossi by Special Commission staff, at 4. Rossi attended the meeting as the voting representative from the Division of State Colleges concerned with other business before the DSB.

²⁰⁵ Id. at 5.

²⁰⁶ O'Brien 6/13/80 interview, at 3.

was less eager to win the UMass/Boston project management than to work as consultant to one or more of the architects -- work which might be more lucrative in J&M's estimation.²⁰⁷ Mauchly Associates' presentation was made by its Vice President, Daniel J. Shields, salesman William F. Harding, and Boston operations manager William D. Regan.²⁰⁸

At the DSB meeting on December 10, 1969, Turner Construction and Carl Morse made their presentations. Before the December 10, 1969 meeting concluded, the DSB directed BBC project engineer Edmund J. McAdam, Jr. to visit and interview the five firms and to report his recommendations at the DSB meeting to be held on December 17, 1969.²⁰⁹ The DSB planned to select the three finalists at the December 17, 1969 meeting after hearing McAdam's report.²¹⁰

On December 11, 1969 -- the day after the second group of interviews before the Designer Selection Board -- Endicott Peabody spoke by telephone with Frederick Kussman (the BBC official who served as executive secretary to the DSB). According to a handwritten memorandum about the call that Peabody wrote to his partner Jeremiah Lambert, Kussman indicated that "MBM looks very good."²¹¹ Peabody's memo continued: "Recommendation will be made next Wednesday [December 17, 1969] to the [A&F Commissioner's] office and he [A&F Commissioner Donald Dwight] will make the selection."²¹² Also on December 11, 1969 Peabody called

207 Rossi 9/11/79 interview, at 5.

208 Notes of 9/14/79 interview of William D. Regan by Special Commission staff, at 4.

209 Testimony of Edmund James McAdam, P.A. 3/7/78 at 5-6; minutes of the 74th regular meeting of the Designer Selection Board, December 17, 1969, at 1.

210 Agenda of 74th regular meeting of the Designer Selection Board, December 17, 1969, supplement.

211 Memorandum from [Endicott] Peabody to [Jeremiah D.] Lambert re: conversation with Kussman on 12/11/69 concerning MBM.

212 Id.

Mansueto in New York,²¹³ perhaps to report this news from Kussman. In addition, Peabody wrote a letter that day to UMass trustee Robert Gordon, with a copy to Morris Goldings, saying, "I believe the Board of Review [Designer Selection Board] and the Bureau of Building Construction is making McKee-Berger-Mansuet[o] Number 1 on their list....I would appreciate any opportunity you have to look into this."²¹⁴

Endicott Peabody's Discovery of,
and Response to, a Conflict of Interest

On December 12, 1969 -- the day after the encouraging comment from Kussman -- Endicott Peabody learned that the Peabody firm was in jeopardy of losing the large fee that it had expected to receive if MBM won the UMass/Boston contract. The problem was a conflict of interest. Peabody testified about this matter before the Post Audit Subcommittee in 1978. The Commission has pursued the investigation that the Post Audit Subcommittee was conducting on this subject.

Peabody has testified that he first became aware of the conflict of interest during a telephone conversation on December 12, 1969 with Albert H. Zabriskie.²¹⁵ Zabriskie was a former mayor (of Newburyport) and former state legislator who knew, and had campaigned for, Peabody.²¹⁶ In 1969, Zabriskie joined the Executive Office of Administration & Finance, serving as Deputy to Donald Dwight.²¹⁷ Dwight, as Commissioner of A&F, was to choose the winner of the UMass/Boston project management contract.

Peabody testified that he telephoned Zabriskie on December 12, 1969 to discuss MBM and the UMass/Boston contract. Peabody asked Zabriskie, during this conversation, whether any of MBM's competitors for the contract were being represented by "lobbyists" (to use Peabody's term). Zabriskie replied that

²¹³ Peabody telephone records.

²¹⁴ Letter dated December 11, 1969 from Endicott Peabody to Robert D. Gordon. Peabody testified to the Commission that he could not recall what he had meant by asking Gordon to look into the matter. Peabody testimony, Sp. Comm. 6/19/80 at 46.

²¹⁵ Peabody testimony, Sp. Comm. 6/19/80 at 94-95.

²¹⁶ Testimony of Albert H. Zabriskie, Sp. Comm. 4/16/80 at 5.

²¹⁷ Id. at 6-7.

State Senator Ronald C. MacKenzie was lobbying on behalf of Mauchly Associates.²¹⁸

Zabriskie was correct that MacKenzie was trying to help Mauchly.²¹⁹ Moreover, MacKenzie appeared to have a bright future ahead of him and -- like Dwight -- was a Republican.

The reason that Zabriskie knew of MacKenzie's involvement was that MacKenzie had just introduced Mauchly's top salesmen, Daniel Shields and William Harding, to Dwight.²²⁰ The Mauchly firm also had the distinctions of (a) having been founded by one of the inventors of the electronic digital computer²²¹ and (b) being a wholly-owned subsidiary of a conglomerate -- Scientific Resources Corporation ("SRC") -- which was listed on the New York Stock Exchange.²²²

Mauchly had submitted its application for the UMass/Boston project management contract by a letter dated October 7, 1969 sent on SRC letterhead stationery.²²³ As explained in SRC's Registration Statement filed with the Securities and Exchange Commission on February 28, 1969²²⁴ --

"Project management is performed primarily by Mauchly itself. This computer-based planning, scheduling and control service employs CPM and related techniques during project design and construction. Engineering and construction knowledge, supported by electronic data processing programs and facilities permit the company to help its clients to meet project completion deadlines and achieve timely occupancy...."

"Most project management work has been done for public bodies, colleges and hospitals whose operational requirements often make it essential that a desired project completion date be met. Because most of the projects for which the Project Management Division attempts to sell its services are major and well-publicized undertakings, there are often a number of competitors seeking the same business."

218 Peabody testimony, Sp. Comm. 6/19/80 at 94-95; P.A. 3/7/78 at 104; P.A. 3/29/78 at 20, 46-47; see memorandum for the file dated December 12, 1969 signed by Endicott Peabody, concerning McKee-Berger-Mansueto.

219 See discussion in Chapter X infra.

220 Testimony of Ronald C. MacKenzie, Sp. Comm. 5/28/80 at 15-16; Shields testimony, Sp. Comm. 6/2/80 at 14; Harding testimony, Sp. Comm. 6/4/80 at 22-23.

221 See discussion in Chapter II supra.

222 See The Commercial and Financial Chronicle, 1969.

223 Letter dated October 7, 1969 from William F. Harding to DSB Chairman Earle F. Littleton.

224 SRC Registration Statement, filed 2/28/69 with the SEC, at 18.

Mauchly's ownership by SRC posed the problem for Peabody. Peabody was a member of SRC's board of directors,²²⁵ so that Peabody's work for MBM constituted a clear conflict of interest with respect to Peabody's fiduciary responsibilities to SRC.²²⁶

Although Peabody has testified that he cured the conflict of interest by suspending his efforts on behalf of MBM,²²⁷ it was not Peabody's engagement by MBM on October 1, 1969 that precipitated the conflict of interest. The problem, rather, occurred when Peabody was elected to the board of directors of SRC on October 23, 1969²²⁸ -- three weeks after Peabody had begun trying to help MBM win the UMass/Boston contract. Peabody has testified that he had no idea that he was engaged in this conflict of interest until he realized it during the December 12, 1969 conversation with Zabriskie.²²⁹

Peabody has indicated that upon discovering the conflict of interest on December 12, 1969, Peabody called his partner Lambert and they agreed that Peabody should disclose his position immediately to Mauchly and to MBM.²³⁰ Peabody placed calls on December 12, 1969 to SRC President Thomas Fleming and to Mauchly Project Management Division President Louis F. Cimino but was unable to

²²⁵ Peabody testimony, Sp. Comm. 6/19/80 at 95.

²²⁶ See Peabody 12/12/69 memorandum for the file.

²²⁷ Peabody testimony, Sp. Comm. 6/19/80 at 92-94; P.A. 3/29/78 at 20.

²²⁸ SRC Notice of 3/3/70 Annual Meeting (notice dated 1/30/70), at 3, n. 5.

²²⁹ Peabody testimony, Sp. Comm. 6/19/80 at 94-96.

²³⁰ Peabody 12/12/69 memorandum for the file.

reach either.²³¹ Peabody then called Mansueto in New York and, according to Peabody, "brought him up-to-date on the information I [Peabody] had up to the point I had learned of the conflict" and told Mansueto that Peabody "could do nothing more until the matter was worked out satisfactorily."²³² According to a "memorandum for the file" signed by Peabody and dated December 12, 1969, Mansueto suggested the possibility of a joint venture with Mauchly on the UMass project, and Peabody said that he would convey that proposal to Mauchly.²³³ Peabody did not speak to anyone from SRC or Mauchly until December 16, 1969,²³⁴ nor did he notify SRC in writing of the conflict of interest or send a telegram or letter to MBM confirming his withdrawal from representing MBM. Mansueto, McKee, Fleming, and Cimino have all denied (or said they had no recollection) that Peabody told them of the conflict of interest and of his decision to stop representing MBM.²³⁵

Although Peabody testified that he did not resume representing MBM until after the DSB eliminated Mauchly from consideration on December 17, 1969,²³⁶ Peabody had several telephone conversations on December 16, 1969 -- which Peabody

231 Peabody daily office record, 12/12/69. Peabody had spoken with Fleming and Cimino, presumably on other subjects, prior to Peabody's election to SRC's board of directors, according to Peabody telephone records for September and October 1969.

232 Peabody 12/12/69 memorandum for the file.

233 Id.

234 Id. Peabody telephone records, 12/12/69 - 12/16/69. Peabody daily office record, 12/12/69 - 12/16/69. Peabody law firm MBM tub card, 12/12/69 - 12/16/69.

235 Mansueto testimony, P.A. 5/23/78 at 33; McKee testimony, P.A. 3/22/78 at 59; notes of 9/14/79 interview of Thomas T. Fleming by Special Commission staff at 5; notes of 3/27/80 interview of Louis F. Cimino by Special Commission staff, at 4.

236 Peabody testimony, P.A. 3/7/78 at 104-105, 146; P.A. 3/29/78 at 47-48, 133-134; Sp. Comm. 6/19/80 at 93-96.

knew was the day before the DSB was going to select the three finalist firms.²³⁷ One of Peabody's telephone conversations on December 16, 1969 was with MBM salesman Martin Heyman.²³⁸ Peabody jotted down some notes of the conversation:²³⁹

"[Heyman] met today with Ed McAdam -- BBC appointee to be [internal BBC] project manager [for UMass/Boston].

"Frank O'Brien [is UMass/Boston's] Planning Director & Hamilton [the UMass voting representative to the DSB] leans heavily -- get vote of UMass.

"2 most important of 7 votes.

"Tomorrow after lunch the voting -- call to a meeting on the 22nd. --

"Al Zabriskie."

Also on December 16, 1969, Peabody called Robert Gordon, the UMass trustee.²⁴⁰ Peabody's notes about this phone call read:²⁴¹

"Hamilton thinks J&M [Jackson & Moreland] have an inside track. Has a vote but going slow on it."

Peabody also spoke with Anthony Mansueto on December 16, 1969.²⁴²

According to Mansueto, they discussed how to deal with an offer that Jackson & Moreland had made to provide free space for the BBC if J&M were awarded the UMass/Boston contract.²⁴³

In addition to the foregoing telephone conversations, Peabody also spoke with MBM President McKee and BBC Director Poitras on December 16, 1969.²⁴⁴ McKee

²³⁷ See text accompanying note 212, supra.

²³⁸ Peabody daily office record, 12/16/69.

²³⁹ Memorandum handwritten by Endicott Peabody.

²⁴⁰ Peabody daily office record, 12/16/69; Peabody law firm MBM tub card I, 12/16/69. Peabody testimony, Sp. Comm. 6/19/80 at 46-47.

²⁴¹ Memorandum dated 12/16/[1969] handwritten by Endicott Peabody, titled "Robert Gordon 12/16."

²⁴² Peabody daily office record, 12/16/69.

²⁴³ Mansueto testimony, P.A. 5/23/78 at 13-16.

²⁴⁴ Peabody telephone records, 12/16/69; Peabody law firm MBM tub card I, 12/16/69.

and Poittrast testified that they do not recall these conversations.²⁴⁵

Peabody also finally spoke with SRC President Fleming on December 16, 1969. During that conversation, according to Peabody's testimony, Peabody informed Fleming of the conflict of interest and of MBM's proposal for a joint venture.²⁴⁶ Fleming said that he would have to think about the joint venture suggestion and get back to Peabody.²⁴⁷ In the meantime, probably during one of the other telephone conversations, Peabody wrote: "12/16. MBM. Mauchly a loser anyway -- too computer based & not field oriented."²⁴⁸

On December 22, 1969, Fleming called Peabody back and, according to Peabody, "said there were problems."²⁴⁹ Fleming might have been referring to Peabody's conflict of interest or to the proposed joint venture. Peabody replied that it was already too late: Mauchly had been eliminated from consideration by the DSB on December 17, 1969, and MBM had been awarded the contract.²⁵⁰ But Peabody assured Fleming that Peabody had not acted on MBM's behalf from December 12, 1969 (when Peabody learned of the conflict) until December 18, 1969 (the day after Mauchly was eliminated).²⁵¹ Peabody gave similar assurances in testimony before the Post Audit Subcommittee and the Commission.²⁵² He also testified that his calls on December 16, 1969 to Heyman, Gordon, Mansueto, McKee, and

²⁴⁵ McKee testimony, P.A. 3/22/78 at 59. Poittrast testimony, P.A. 2/23/78 at 60-61.

²⁴⁶ Peabody daily office record, 12/16/69. Peabody testimony, Sp. Comm. 6/19/80 at 95.

²⁴⁷ Peabody testimony, Sp. Comm. 6/19/80 at 95.

²⁴⁸ Memorandum dated December 16, [1969] handwritten by Endicott Peabody, titled "MBM."

²⁴⁹ Memorandum dated Monday, December 22, [1969], 5 pm, handwritten by Endicott Peabody at the bottom of the Peabody 12/12/69 memorandum for the file concerning McKee-Berger-Mansueto.

²⁵⁰ Id.

²⁵¹ Id.

²⁵² Peabody testimony, P.A. 3/7/78 at 104-105, 146; P.A. 3/29/78 at 47-48, 133-134; Sp. Comm. 6/19/80, at 93-96.

Poitrast merely involved attempts to find out if the DSB had acted -- so that Peabody would know whether he could resume his representation of MBM during the final stage of the contract-award process (i.e., the stage in which A&F Commissioner Dwight would select one of the three finalists as the winner).²⁵³

The DSB's Selection of
Three Finalists on
December 17, 1969

On December 17, 1969 the Designer Selection Board met to select three finalists for the UMass/Boston project management contract.²⁵⁴ Those names were to be forwarded to A&F Commissioner Donald Dwight, who would choose one of them as winner of the contract.

Before voting, the DSB heard the evaluations of the five semi-finalists that it had asked BBC engineer Edmund McAdam to make.²⁵⁵ McAdam had visited the offices of only three finalists, but he reported on all five of them. One of the firms that McAdam had not visited was Mauchly,²⁵⁶ even though Mauchly's office was within three blocks of the BBC's office.²⁵⁷

McAdam told the DSB that Turner Construction could provide the necessary in-depth services.²⁵⁸ He also reported "without any reservation" that Jackson & Moreland had the necessary qualifications, personnel and facilities in Boston to perform all the required services on the UMass/Boston project.²⁵⁹ McAdam was less enthusiastic about MBM. He expressed the opinion that MBM did not have

²⁵³ Peabody testimony, P.A. 3/29/78 at 135.

²⁵⁴ Agenda of 74th regular meeting of the Designer Selection Board, December 17, 1969, supplement.

²⁵⁵ Minutes of the 74th regular meeting of the Designer Selection Board, December 17, 1969, at 1. Memorandum dated December 17, 1969 from E[dmund] McAdam to the Design[er] Selection Board, concerning the selection of the project management consultant for UMass/Boston.

²⁵⁶ McAdam 12/17/69 memorandum at 1.

²⁵⁷ Contemporaneous documents show that Mauchly's office was at 15 Court Square and the BBC's office was at 100 Cambridge Street.

²⁵⁸ McAdam 12/17/69 memorandum at 3.

²⁵⁹ Id. at 2 (emphasis original).

on its present staff in Boston the professional engineers and architects necessary for the project. Moreover, MBM's proposed project manager was not a registered professional engineer, which McAdam said was a requirement for the position.²⁶⁰ Without having visited Mauchly, McAdam reported that the firm lacked the necessary in-depth staff in design review and construction although it appeared strong in CPM, the computer scheduling of design and construction.²⁶¹

McAdam presented a memorandum to the DSB on December 17, 1969 that recorded these evaluations.²⁶² McAdam's memorandum concluded by recommending three firms in the following order: (1) Jackson & Moreland; (2) Turner Construction; and (3) MBM.²⁶³

The DSB then voted for the three firms that McAdam had recommended.²⁶⁴ UMass apparently gave MBM its first place vote.²⁶⁵ It is not clear how the other six DSB members cast their votes. The names of the three finalist firms were then forwarded -- in alphabetical order -- to A&F Commissioner Donald Dwight.²⁶⁶

Although the identity of the finalists was supposed to be secret until the winner was selected,²⁶⁷ Endicott Peabody has testified that he heard of the decision the same day, probably from Poittrast or Kussman.²⁶⁸ With Mauchly eliminated, Peabody decided that he no longer had a conflict of interest so he "stressed to Mr. Poittrast the qualifications of MBM as compared with the

260 Id. at 2; McAdam testimony, P.A. 3/7/78 at 19-20.

261 McAdam 12/17/69 memorandum, at 2; McAdam testimony, P.A. 3/7/78 at 31.

262 McAdam 12/17/69 memorandum; Poittrast testimony, P.A. 3/2/78 at 26-27.

263 McAdam testimony, P.A. 3/7/78, at 36; McAdam 12/17/69 memorandum, at 3.

264 Minutes of 12/17/69 DSB meeting, at 2.

265 Willard Prince says that UMass may have voted only for MBM. Notes of 5/8/79 interview of Willard Prince, at 3. William R. Hamilton, Jr. says he has no recollection of voting only for one firm, but he does recall that MBM was one of the firms he favored. Hamilton 5/13/79 interview, at 14-16.

266 Letter of transmittal dated December 17, 1969 from Earle F. Littleton to Donald R. Dwight.

267 Littleton testimony, P.A. 3/1/78 at 39-40.

268 Peabody testimony, Sp. Comm. 6/19/80 at 93-94. See Peabody daily office record, 12/17/69; Peabody telephone log, 12/17/69.

qualifications of the other firms recommended by the Board."²⁶⁹ More to the point -- since A&F Commissioner Donald Dwight would be making the final decision -- Peabody turned his attention to A&F.

The Alleged Meeting of Endicott Peabody
and Deputy A&F Commissioner
Albert H. Zabriskie on December 18 or 19, 1969

Endicott Peabody knew Donald Dwight both professionally and personally. Peabody, while Governor, had launched Dwight's career in public life by appointing Dwight to the Department of Public Works. Beyond this political link, Peabody knew Dwight's family.²⁷⁰ Peabody understood that the selection of the UMass/Boston project management firm was a matter totally within Dwight's discretion.²⁷¹ Peabody also was aware that his own firm would receive a large fee from MBM if Dwight chose MBM for the UMass/Boston job.²⁷²

Nonetheless, Peabody testified that he had no contact with Dwight, either in person or by telephone, at any time during the selection process for the UMass/Boston project management contract.²⁷³ Instead, Peabody stated that he contented himself with two discussions with Dwight's Deputy Commissioner, Albert H. Zabriskie. The first of those conversations took place over the telephone on December 12, 1969; it has been discussed above. The other discussion, according to Peabody, took place on the evening of December 18 or 19, 1969 at Zabriskie's home in Newburyport.²⁷⁴

In interviews, Albert Zabriskie has told Commission staff that he recalls no meetings with Peabody during December 1969.²⁷⁵ However, Zabriskie has also said that he does not recall other meetings with Peabody about which Peabody wrote lengthy and detailed contemporaneous memoranda. Members of Zabriskie's family recall Peabody going to Zabriskie's mother's house around Christmas time, probably in 1969, looking for Zabriskie.²⁷⁶

²⁶⁹ Peabody testimony, P.A. 3/7/78 at 105.

²⁷⁰ Peabody testimony, Sp. Comm. 6/19/80 at 101.

²⁷¹ See discussion supra.

²⁷² See discussion supra and in Appendix A to this Final Report on MBM.

²⁷³ Peabody testimony, Sp. Comm. 6/19/80 at 101, 113, 126.

²⁷⁴ Peabody testimony, Sp. Comm. 6/19/80 at 143-144.

²⁷⁵ Notes of 3/3/80 and 10/3/80 interviews of Albert H. Zabriskie by Commission staff.

²⁷⁶ Id.

Judging from Peabody's testimony, Peabody's alleged meeting with Zabriskie on December 18 or 19, 1969 was regarded by Peabody as an important prelude to a meeting that Peabody intended to set up with Dwight.²⁷⁷ Peabody testified that he flew from Washington, D.C. to Boston on December 18 or 19, 1969 solely to meet with Zabriskie.²⁷⁸ Rather than inconvenience Zabriskie, Peabody rented a car and drove to Zabriskie's house, according to Peabody's testimony.²⁷⁹ During his conversation with Zabriskie, Peabody tried to explain why MBM was "pre-eminent" and better qualified than Turner and Jackson & Moreland, Peabody testified.²⁸⁰

According to Peabody's testimony, Peabody received the impressions that Zabriskie would probably recommend MBM to Dwight and that Dwight would probably weigh Zabriskie's recommendation heavily.²⁸¹ However, Zabriskie did not say that Dwight had fully and irrevocably delegated the decision to Zabriskie, nor did Zabriskie say that Dwight had already decided to award the contract to MBM, according to Peabody's testimony.²⁸² Moreover, Zabriskie was new at A&F,²⁸³ and Peabody had no way of knowing whether Dwight would follow what Peabody believed would be Zabriskie's recommendation.²⁸⁴

Accordingly, Peabody told Zabriskie that Peabody wanted to speak directly with Dwight, Peabody testified.²⁸⁵ According to Peabody, Zabriskie replied that it was not necessary for Peabody to talk to Dwight.²⁸⁶ Peabody testified that although he knew Dwight personally, and although quite a bit was at stake for Peabody and for MBM, Peabody decided not to contact Dwight.²⁸⁷ Peabody

277 See Peabody testimony, Sp. Comm. 6/19/80 at 99.

278 Peabody testimony, Sp. Comm. 6/19/80 at 98.

279 Id. at 106.

280 Id. at 98-99, 108-109.

281 Id. at 99-100, 130-132.

282 Id. at 121, 126.

283 Zabriskie testimony, Sp. Comm. 4/16/80 at 7. He began at A&F on August 25, 1969.

284 Peabody testimony, Sp. Comm. 6/19/80 at 102.

285 Id. at 99.

286 Id. at 99-100.

287 Id. at 103-104.

testified that although he was "fully prepared ... and indeed wanted" to contact Dwight, he decided not to do so because of a concern that Zabriskie might find out about such a contact and feel sufficiently "crossed" as somehow to cause Dwight not to select MBM.²⁸⁸

²⁸⁸ Id.

The Alleged Meeting of MBM Vice President
 Anthony Mansueto and MBM Salesman Martin Heyman
with A&F Commissioner Donald Dwight on December 19, 1969

Although Endicott Peabody may not have spoken with Donald Dwight, there is evidence that MBM Vice President Anthony Mansueto and MBM salesman Martin Heyman did meet with Dwight on December 19, 1969. In particular, Martin Heyman testified twice and executed an affidavit about the meeting,²⁸⁹ and the following is Heyman's account: When Heyman learned on December 17, 1969 that MBM had been selected as a finalist for the UMass/Boston contract, he suggested to Mansueto that a meeting be arranged with A&F Commissioner Donald Dwight, since Dwight would be awarding the contract.²⁹⁰ Heyman and Mansueto had already met once with Dwight, when they were introduced to Dwight by Albert Manzi on March 25, 1969.²⁹¹ Heyman's suggestion was followed, and it was probably Mansueto who set up the meeting, although Peabody may have arranged it.²⁹² The meeting took place on Friday, December 19, 1969 and consisted of an informal presentation and discussion of the project and MBM's capabilities. Only Dwight, Heyman, and Mansueto were present.²⁹³ Dwight did not ask any incisive questions,²⁹⁴ and Heyman and Mansueto left the meeting feeling let down and

289 See Heyman testimony, P.A. 3/6/78 at 29-33; P.A. 6/9/78 at 23-28; Heyman 8/23/80 affidavit at 1.

290 Heyman testimony, P.A. 3/6/78 at 29.

291 See discussion supra

292 Heyman testimony, P.A. 3/6/78 at 29. It is also possible that there was no prior appointment, and that Heyman and Mansueto simply walked in. Heyman testimony, P.A. 6/9/78 at 23.

293 Heyman testimony, P.A. 6/9/78 at 26-27; Heyman 8/23/80 affidavit, at 2. Heyman testified that the meeting occurred on December 18 or 19 and that Mansueto definitely was present. Mansueto was in Boston only on December 19. See Mansueto pocket diary, 12/18/69 and 12/19/69.

294 Heyman testimony, P.A. 6/9/78 at 28.

uneasy because Commissioner Dwight was not as cordial and friendly as at the prior meeting when Mr. Manzi had introduced us."²⁹⁵

Mansueto, in testimony before the Post Audit Subcommittee in 1978, said that he did not recall such a meeting.²⁹⁶ However, Mansueto's pocket diary shows that Mansueto planned to fly to Boston on December 18, 1969. The diary indicates that Mansueto intended to go first to Chicago and then to Boston, returning to New York early on December 19, 1969, in time for MBM's Christmas party.²⁹⁷ But bad weather in Chicago prevented Mansueto from getting to Boston on December 18, 1969, so he flew to Boston on December 19, 1969, delaying his return to New York.²⁹⁸ Presumably, Mansueto would not have made the detour to Boston unless he considered it important.

The Commission wished to question Mansueto about this matter, particularly in light of Endicott Peabody's new testimony about a meeting that Peabody allegedly had with Dwight's deputy (Albert Zabriskie) on December 18 or 19, 1969.

Unfortunately, Mansueto refused to appear and testify before the Commission.²⁹⁹

Endicott Peabody has testified that he did not know of the Heyman-Mansueto-Dwight meeting in 1969.³⁰⁰ Peabody acknowledged that he spoke with Mansueto and Heyman by telephone on December 19, 1969 but said that he did not recall what they discussed.³⁰¹

As for Donald Dwight, he testified to the Post Audit Subcommittee in 1978 and

²⁹⁵ Heyman 8/23/80 interview at 2. See Heyman testimony, P.A. 6/9/78 at 18-19, 28; P.A. 3/6/78 at 32-33.

²⁹⁶ Mansueto testimony, P.A. 5/23/78 at 20-22; P.A. 6/9/78 at 79.

²⁹⁷ Mansueto pocket diary, 12/18/69 and 12/19/69.

²⁹⁸ Id.

²⁹⁹ See Sp. Comm. 6/27/80 at 4-5.

³⁰⁰ Peabody testimony, Sp. Comm. 6/19/80 at 125.

³⁰¹ Id. at 115, 121-122.

in initial testimony to the Commission in 1980 that he did recall meeting with MBM officials, including one of the principals [probably Mansueto] on a "courtesy call" on some occasion before he selected MBM for the UMass/Boston contract.³⁰² But he indicated that he did not remember whether that meeting occurred in December 1969 or at some other time.³⁰³ The Commission wished to question Dwight at length about these matters, but Dwight -- an out-of-state witness who asked the Commission to extend him the courtesy, as a former Lieutenant Governor, of not subpoenaing him while he was in the state -- did not keep his promise to return for full, public testimony.³⁰⁴

Because of the conflicting testimony about the alleged Peabody-Zabriskie meeting and the alleged Dwight-Mansueto-Heyman meeting, it is difficult to know what to make of these alleged meetings. This is particularly true since it is unclear whether the alleged Peabody-Zabriskie meeting took place on the evening of December 18, 1969 (the night before the alleged Dwight-Mansueto-Heyman meeting) or whether it occurred on the night of December 19, 1969 (some time after the alleged Dwight-Mansueto-Heyman session).

If Peabody met with Zabriskie on December 18, 1969, it may be that Zabriskie's suggestion that Peabody avoid direct contact with Dwight caused Mansueto and Heyman to see Dwight on December 19, 1969. On the other hand, if Peabody met Zabriskie on the evening of December 19, 1969, Peabody may have done so as a result of the Dwight-Mansueto-Heyman meeting earlier in the day which left Mansueto and Heyman uneasy about MBM's chances of winning the contract. Finally, of course, it may be that one or both of these meetings did not take place as described by Peabody and/or Heyman.³⁰⁵ Without being able to question Mansueto and Dwight fully and under oath, the Commission cannot resolve these matters.

³⁰² Testimony of Donald R. Dwight, P.A. 3/15/78 at 24, 44-45; Sp. Comm. 4/14/80 at 16.

³⁰³ Dwight testimony, P.A. 3/15/78 at 44-45.

³⁰⁴ See statement of Commission Chairman John William Ward, Sp. Comm. 4/14/80 at 3-5.

³⁰⁵ This raises other possibilities. For example, the Dwight-Heyman-Mansueto meeting may have occurred on December 19, 1969 as described by Heyman, and Peabody may thereafter have driven to Newburyport but not found Zabriskie, as Zabriskie maintains.

The MBM Christmas Party
in New York on
December 19, 1969

The 1969 MBM Christmas party in New York was held on Friday, December 19, 1969, beginning at 3 p.m.³⁰⁶ Anthony Mansueto arrived after the party had started, having been in Boston allegedly meeting with A&F Commissioner Dwight about the UMass/Boston contract.³⁰⁷ According to MBM Vice President Jack Thomas, who also was present at the MBM Christmas party in New York, Mansueto received several telephone calls during the party.³⁰⁸ Mansueto allegedly told Thomas and others that the calls were from Endicott Peabody, who was in Boston "keeping close tabs" on the final selection process for the UMass/Boston contract.³⁰⁹ Peabody allegedly made several calls to report who was in the lead and finally told Mansueto that MBM had definitely been awarded the contract.³¹⁰ MBM salesman Ivan Soskel also recalled, in 1980, that he learned during the MBM 1969 Christmas party that MBM had won the UMass/Boston contract.³¹¹ Moreover, Martin Heyman has remembered having heard that MBM won the contract during a small Christmas party for MBM staff held in Boston on the same day.³¹² In addition, Anthony Mansueto testified to the Post Audit Subcommittee that he learned of the contract award during the 1969 Christmas party.³¹³

Endicott Peabody's records from 1969 reflect four telephone calls to or from

306 Mansueto pocket diary, 12/19/69; Mansueto December 1969 calendar; Jack S. Thomas December 1969 calendar.

307 Written statement dated December 14, 1979 and executed by Jack S. Thomas, concerning the December 19, 1969 MBM Christmas party and the December 22, 1969 kick-off meeting held by the BBC. See discussion supra about the alleged Dwight-Heyman-Mansueto meeting on December 19, 1969.

308 Thomas statement, supra. n. 307.

309 Id.

310 Id.

311 4/30/80 interview of Ivan Soskel by Special Commission staff.

312 Heyman 8/23/80 affidavit, at 2.

313 Mansueto testimony, P.A. 5/23/78 at 18-19. Mansueto incorrectly remembered the date of the Christmas party.

New York and four calls to or from Boston on December 19, 1969 regarding MBM.³¹⁴ Some of those calls, according to Peabody, were to Mansueto and Heyman.³¹⁵ Peabody testified that his meeting with Dwight's deputy, Albert Zabriskie, may have occurred on December 19, 1969 and that he probably reported the results of that meeting in a telephone call to Mansueto.³¹⁶

The evidence that MBM was selected for the UMass/Boston contract on December 19, 1969 is of interest for several reasons. First, it indicates that Dwight made the selection of the winner of this large and unprecedented contract with great haste (since the earliest that Dwight could have received the names of the three finalists from the DSB was late in the day on Wednesday, December 17, 1969). Second, it raises further questions about what may have transpired during the alleged meeting of Peabody with Dwight's deputy Zabriskie, and during the alleged meeting of Dwight himself with Mansueto and Heyman. Third, it suggests that MBM may have been awarded the contract as a result of some high-level, last-minute bargaining or discussion.

Additional support for the proposition that MBM learned of the contract award on Friday, December 19, 1969 comes from MBM's participation in the UMass/Boston project kick-off meeting held at 10 a.m. on Monday, December 22, 1969. We will review the evidence about that meeting and then consider Donald Dwight's testimony about how he chose MBM for the UMass/Boston contract.

³¹⁴ December 19 [1969] entry in Endicott Peabody's spiral notebook.

³¹⁵ Peabody testimony, Sp. Comm. 6/19/80 at 115, 121-122.

³¹⁶ Id. at 122.

The "Kick-off Meeting" for
the UMass/Boston Project on
Monday Morning, December 22, 1969

On December 11, 1969, Edmund J. McAdam, Jr., BBC project engineer for the UMass/Boston project, began arranging a UMass/Boston "kick-off meeting" to be held at the BBC offices on Monday, December 22, 1969 at 10 a.m. McAdam sent invitations to the architects, the master planner, and the site developer for the project.³¹⁷ No letter of invitation to MBM (or to any of the other finalists for the project management contract) was located in the files of the BBC, the university, or MBM. Nonetheless, four MBM staff members attended the December 22, 1969 kick-off meeting.³¹⁸ Although MBM Vice President Anthony Mansueto did not attend this kick-off meeting, the time and place of the meeting were noted and crossed out in Mansueto's pocket diary.³¹⁹ No representatives of the other finalist firms for the project management contract attended the meeting.³²⁰

MBM Vice President Jack Thomas recalls attending the meeting and says that he was informed in advance -- probably on Friday, December 19, 1969 as

³¹⁷ See, e.g., letter dated December 12, 1969 from Edmund J. McAdam to the attention of Frank O'Brien, "Re: Mass State Project U67-4, University of Massachusetts, Boston, Massachusetts."

³¹⁸ Signed attendance list at 12/22/69 meeting, headed by the name Walter J. Poitras; memorandum dated December 24, 1969 of Jack S. Thomas.

³¹⁹ Mansueto pocket diary, 12/22/69.

³²⁰ See signed attendance list from 12/22/69 meeting.

a result of the calls from Peabody to Mansueto -- that Thomas and other MBM employees should go to the kick-off meeting on December 22, 1969.³²¹ Furthermore, according to Thomas, "there was no doubt at the [December 22, 1969] meeting that MBM had previously been selected as project manager."³²² Martin Heyman, who also attended the kick-off meeting, also recalls knowing in advance of MBM's selection.³²³

Endicott Peabody's office record lists two MBM-related telephone conversations on Sunday, December 21, 1969, one with Martin Heyman and one with Dwight's deputy, Albert Zabriskie.³²⁴ If MBM did learn on Friday, December 19, 1969 about winning the contract, it may have occurred to Heyman that it would appear strange for MBM officials to arrive at the December 22, 1969 kick-off meeting without Dwight having even notified the BBC of the

321 Thomas 12/14/79 written statement concerning the December 19, 1969 MBM Christmas party and the December 22, 1969 kick-off meeting held by the BBC.

322 Id.

323 Heyman 8/23/80 affidavit, at 2.

324 Peabody daily office record, 12/21/69.

selection.³²⁵

In 1971, when a legislative committee was investigating MBM's UMass/Boston contract, MBM submitted a chronology³²⁶ stating that MBM learned of its selection and attended the kick-off meeting on Tuesday, December 23, 1969.³²⁷ What appears to be an earlier draft of the chronology³²⁸ correctly listed the kick-off meeting as occurring on December 22, 1969. MBM apparently did not submit this earlier draft to the DiCarlo Committee.

Donald Dwight's Selection of MBM
as the Winner of the UMass/Boston
Project Management Contract

Donald Dwight has testified that he had very little material to consult in making his selection of MBM as the firm to receive the first project management contract in the history of the Commonwealth.³²⁹ He said that his custom in awarding architectural contracts was to consider the amount of work each of the finalist firms had done for the state, the geographical locations of the

³²⁵ On December 24, 1969, Jack Thomas prepared a file memo describing the December 22 meeting. Memorandum for the file dated December 24, 1969 of Jack S. Thomas, concerning "Job No. 459-004 Construction Management Services." The memo recited that it was at this meeting that MBM was informed of its selection to provide project management services for the UMass/Boston project. The memo did not explain how MBM representatives came to be present at the meeting. Nor did it explain how the BBC could have known of the selection in order to notify MBM. Dwight's letter notifying the BBC of MBM's selection is date-stamped as received at 12:18 p.m. on December 23, 1969 -- the day after the kick-off meeting. Endicott Peabody wrote notes dated December 22, 1969 indicating that MBM received notice of its selection "15 m[inutes] before [the kick-off] meeting." Memorandum dated 12/22/[1969] handwritten by Endicott Peabody, concerning a conversation with Martin Heyman.

³²⁶ "Chronology of Selection, Appointment, Negotiations and Consummation of Contract No. 601, State Project No. U67-4 No. 2A," at 2, prepared by MBM in February 1971. This chronology was an attachment to a letter dated February 18, 1971 from Gerald McKee, Jr. to Senator Joseph J.C. DiCarlo, concerning the legislative investigation of the MBM contract.

³²⁷ There was a meeting on December 23, 1969 between the BBC and MBM. It was a follow-up to the previous day's kick-off meeting. Memorandum for file dated December 29, 1969 by Jack S. Thomas.

³²⁸ "Chronology of Important Milestone Dates concerning the UMass/Boston Project," found in MBM's files.

³²⁹ Dwight testimony, Sp. Comm. 4/14/80 at 11.

job and of the firm, and the rankings by the DSB.³³⁰ He testified that he did not normally consider technical information since he felt that any firm selected as a finalist by the DSB must have been "qualified" for the job.³³¹ Although the names of finalist firms were transmitted to the A&F Commissioner in alphabetical order by the DSB -- with the effect that the public would not know how high the DSB had ranked the firm ultimately chosen by the A&F Commissioner -- Dwight testified that he was sent, under separate cover, the actual rankings by the DSB.³³²

Dwight testified that if it had been brought to his attention that one of three finalist firms had made a substantial political contribution to the Sargent-Dwight campaign, that fact might have had some influence on his decision.³³³ Dwight also acknowledged that Republican fundraiser Albert Manzi "occasionally" made recommendations to him about firms designated as finalists by the Designer Selection Board, but Dwight said that he recalled no specific instances.³³⁴

Dwight indicated that he had no specific recollection of why he selected MBM for the UMass/Boston project management contract. He testified that he had the "dominant impression" that MBM had more project management experience than the other finalists, but he did not recall the source of that impression.³³⁵ Dwight said that it was possible that Peabody spoke with him on behalf of MBM.³³⁶

³³⁰ Id.

³³¹ Id. at 14.

³³² Id. at 12-14.

³³³ Dwight testimony, P.A. 3/15/78 at 83; Sp. Comm. 4/14/80 at 27.

³³⁴ Dwight testimony, Sp. Comm. 4/14/80 at 18-19.

³³⁵ Dwight testimony, P.A. 3/15/78 at 28-30.

³³⁶ Id. at 48.

Dwight testified: "I concede it is possible but ... [i]t is my best recollection that I don't recall" whether Peabody spoke to him about the contract.³³⁷

Finally, Dwight testified that if he had been mistaken about having had the impression that MBM had greater project management experience, it might have been that he chose MBM by "relying on ... the dart board theory."³³⁸

Dwight's Selection of Haldeman & Goransson
For One of the UMass/Boston
Architectural Contracts

About two weeks before A&F Commissioner Donald Dwight selected MBM for the project management contract at UMass/Boston, he selected the architects for the six buildings to be constructed on the new campus.³³⁹ One of Dwight's architectural selections is of some interest and may shed some light on how Dwight chose MBM two weeks later.

The architectural firms submitting proposals were screened by the Designer Selection Board in the usual way, and three finalists for each building were submitted to Dwight for his decision. One firm, Haldeman & Goransson, was listed as a finalist for three different buildings -- a major academic building ("College I") and two smaller buildings (the administration building and the service/maintenance building). No other firm was a finalist for more than two buildings.³⁴⁰

Haldeman & Goransson's success in the DSB came as something of a surprise, at least to UMass officials. Several weeks before the DSB's vote, Willard W. Prince, an architect on UMass's planning staff, prepared a memo for William R. ("Roy") Hamilton, Jr., the UMass/Boston Vice Chancellor serving as voting

³³⁷ Id. at 44.

³³⁸ Dwight testimony, P.A. 3/15/78 at 62.

³³⁹ See letter dated December 8, 1969 from Donald R. Dwight to Walter Poitras, concerning the appointment of six architects for the six UMass/Boston Buildings.

³⁴⁰ See letters dated November 28, 1969 from DSB Chairman Earle F. Littleton to D[onald] R. Dwight, re: Mass. State Projects U67-4 #3 through U67-4 #8, List 70-1, items 21 through 26, introduced as O'Brien Exhibits 1A through 1F, Sp. Comm. 6/16/80 at 8.

representative to the DSB.³⁴¹ Prince's memo indicates that the University regarded Haldeman & Goransson as unqualified for any of the buildings and that the firm was being considered by the DSB only for the two small buildings.³⁴² However, Prince reported that Haldeman & Goransson seemed to "have some friends on the [Designer Selection] Board."³⁴³

Once Haldeman & Goransson was selected as a finalist by the DSB, UMass Planning Director Francis E. O'Brien, Jr. became somewhat concerned because Haldeman & Goransson did not seem to have any reputation and "seemed to be unknown" to most of the people who were contacted by the University in its investigation of the various architectural firms.³⁴⁴ Indeed, O'Brien drafted (but did not send) a letter to Commissioner Dwight³⁴⁵ that read in part:

"It is surprising that Haldeman and Goransson appeared on the DSB list at all, when one looks at the many firms with national reputations who expressed an interest in one or more of the University buildings at Columbia Point. Haldeman and Goransson have no reputation at all...."

Haldeman & Goransson's success with the DSB was somewhat tenuous: the firm was ranked third (i.e., last among the finalists) in the DSB voting for each of the buildings for which it was a finalist.³⁴⁶

On Friday, November 28, 1969 -- two days after the DSB voting -- Frederick J. Kussman, assistant to the BBC Director, allegedly called David Wallace of the architectural firm Geometrics, which was ranked second by the DSB for the administration building. Kussman allegedly suggested that if Geometrics were

341 Handwritten [October 23, 1969] memorandum from "Will" [Willard W.] Prince to "Roy" [William R.] Hamilton, re: "Selection of Architects - Columbia Point," introduced as Hamilton Exhibit 1, Sp. Comm. 6/16/80 at 5-6.

342 See Hamilton testimony, Sp. Comm. 6/1/80 at 7-8.

343 Prince [10/23/69] memorandum to Hamilton at 2.

344 O'Brien testimony, Sp. Comm. 6/16/80 at 9-10.

345 Handwritten letter dated December 10, 1969 from Francis E. O'Brien, Jr. to Donald [R.] Dwight, concerning the selection of Haldeman & Goransson as architect for College I. The letter was not sent.

346 O'Brien testimony, Sp. Comm. 6/16/80 at 11.

interested in working on the administration building, it should consider a joint venture with the third-ranked firm, Haldeman & Goransson.³⁴⁷ Shortly afterward, Wallace was allegedly called by Haldeman & Goransson's President Nathan Weiner and a meeting to discuss the matter was arranged for December 1, 1969. Wallace, however, allegedly became uneasy, presumably because it seemed unusual to suggest a joint venture at that stage -- after the DSB had determined that each of the finalist firms was qualified on its own.³⁴⁸ Wallace felt sufficiently uneasy that he telephoned Willard Prince of the UMass planning and development office. Prince reported the conversation to Planning Director O'Brien, who thought the proposal from Kussman was "strange," "unusual," and "irregular."³⁴⁹ O'Brien wondered if the call to Wallace might be part of a pattern. Since O'Brien knew that Haldeman & Goransson also ranked third on the supply/maintenance building, he asked Prince to call J. Timothy Anderson, whose firm had been ranked second on that building. Anderson allegedly would neither confirm nor deny that he had received similar calls from Kussman and Weiner; "Anderson would only say that he heard 'something funny' was going on and spent an uneasy weekend as a result."³⁵⁰

As a consequence of these events, O'Brien drafted a strongly-worded letter to Dwight asking "What the deuce is going on, if anything?"³⁵¹ O'Brien decided not to send the letter as a result of a discussion with Hamilton, who told

³⁴⁷ Id. at 11-12; draft letter dated December 2, 1969 from Francis E. O'Brien, Jr. to Donald [R.] Dwight, concerning the proposal by Kussman of a joint venture. The letter was not sent.

³⁴⁸ O'Brien 12/2/69 draft letter to Dwight; O'Brien testimony, Sp. Comm. 6/16/80 at 12.

³⁴⁹ O'Brien 12/2/69 draft letter to Dwight; O'Brien testimony, Sp. Comm. 6/16/80 at 14.

³⁵⁰ O'Brien 12/2/69 draft letter to Dwight.

³⁵¹ Id.

O'Brien that he would take up the matter with Dwight in person.³⁵² When Hamilton did speak to Dwight, Dwight allegedly said that he (Dwight) was surprised at Kussman and that he could not believe that Weiner was involved since Weiner was a friend of Dwight's. Dwight allegedly assured Hamilton that Dwight would select the firm ranked first by the DSB for each building.³⁵³

Dwight, in fact, did not select Haldeman & Goransson for the administration building or for the supply/maintenance building. But, in UMass's view, he did something worse: he chose Haldeman & Goransson for the much larger College I building, which happened to be the one building that UMass had not checked about.³⁵⁴ Hamilton reacted with "certainly a lot of surprise and some dismay" on learning of the selection.³⁵⁵ O'Brien drafted another letter to Dwight, this one even more "steamy," but he did not send this letter either, apparently regarding the cause as lost.³⁵⁶

The university's fears were borne out, according to Hamilton. Haldeman & Goransson's College I building presented the university with "perhaps more problems than any other single building" on the new campus, according to Hamilton's testimony.³⁵⁷ The university's planning and development staff "put in an inordinate amount of time assisting those designers to get the building design together."³⁵⁸ Furthermore, serious operational problems existed with the heating, ventilation, and air conditioning systems, with roof leaks, and with other aspects of the College I building.³⁵⁹

Dwight's selection of Haldeman & Goransson occurred just two weeks before Dwight selected MBM for the UMass/Boston project management contract.

³⁵² O'Brien testimony, Sp. Comm. 6/16/80 at 15-16.

³⁵³ Id. at 16: O'Brien 12/2/69 draft letter to Dwight.

³⁵⁴ Letter dated December 8, 1969 from Donald R. Dwight to Walter Poittrast.

³⁵⁵ Hamilton testimony, Sp. Comm. 6/16/80 at 12.

³⁵⁶ O'Brien testimony, Sp. Comm. 6/16/80 at 18.

³⁵⁷ Hamilton testimony, Sp. Comm. 6/16/80 at 12.

³⁵⁸ Id.

³⁵⁹ Id. at 12-13.

Governor Francis W. Sargent's
Knowledge or Lack of Knowledge
of the Award of the UMass/Boston
Project Management Contract

Endicott Peabody has testified that he met with then Governor Francis W. Sargent on November 24, 1969 -- approximately one month before MBM won the UMass/Boston contract -- and that Peabody may have mentioned MBM to Sargent and may have billed MBM for time Peabody spent in the meeting with Sargent.³⁶⁰ Peabody did not testify that he did tell Sargent about MBM or that he did bill MBM for such a discussion. Rather, Peabody testified that he "would not have [had] any reluctance" to do those things, and that he therefore would not rule out the possibility that he had done so.³⁶¹

Francis Sargent has acknowledged, in testimony to the Commission, that he met with Peabody "maybe two or three or four times" while Sargent was Governor.³⁶² According to Sargent³⁶³ --

"Usually [Peabody] came in and talked to me about some absurd appointment somewhere in State government that I couldn't imagine he would be interested in, or [that] I would [be interested in], to tell you the truth.

As for discussions about MBM, Sargent testified:³⁶⁴

"I am certain if I had talked with him about that, or if he had told me that he was representing a firm and wanted to be sure they got a contract, I would have remembered that. I don't remember it, I don't recall it, I don't really think it could have happened, because I think I would have remembered it, a former Governor coming in and saying I represent such and such a firm and want to do this and that. ... I feel certain I would remember that. But, I have no recollection whatsoever of any such conversation."

The Commission has no evidence that then-Governor Sargent was involved in any way in the selection of MBM to receive the UMass/Boston contract.

³⁶⁰ Peabody testimony, Sp. Comm. 6/19/80 at 147-148; see also daily office record of Endicott Peabody, 11/24/69; Peabody law firm MBM tab card I, entry for 11/24/69.

³⁶¹ Peabody testimony, Sp. Comm. 6/19/80 at 149.

³⁶² Testimony of Francis W. Sargent, Sp. Comm. 12/10/80 at 72.

³⁶³ Id.

³⁶⁴ Id.

MBM Vice President Anthony E. Mansueto's
Testimony About the UMass/Boston Contract

Before concluding this chapter, it is necessary to discuss certain aspects of Anthony Mansueto's testimony about the UMass/Boston contract. Mansueto was MBM's Vice President in charge of sales in 1969. Mansueto had devoted considerable effort to developing Massachusetts business for MBM prior to 1969, and Mansueto has testified that it was he who coordinated MBM's successful attempt to obtain the UMass/Boston contract.³⁶⁵ Mansueto's participation in MBM's efforts to win the UMass/Boston contract has been corroborated by MBM President Gerald McKee, Jr.³⁶⁶

Mansueto was well acquainted with fundraiser Albert Manzi by 1969,³⁶⁷ but Mansueto, in testimony before the Post Audit Subcommittee in 1978,³⁶⁸ swore that he never discussed the UMass/Boston contract with Manzi prior to MBM's obtaining the contract. Further, Mansueto testified to the Post Audit Subcommittee in 1978 that an entry "Manzi-Turnpike" in Mansueto's desk calendar for December 16, 1969 -- just days before MBM won the UMass/Boston contract -- did not reflect a meeting or conversation with Manzi, but rather was an erroneous entry that Mansueto's secretary made because she knew that Mansueto was to be in

³⁶⁵ See, e.g., Mansueto testimony, 9 DiC 2/4/77 at 5-6.

³⁶⁶ McKee testimony, Sp. Comm. 6/26/80 at 51-52.

³⁶⁷ See discussion supra, in Chapter III.

³⁶⁸ Mansueto testimony, P.A. 6/9/78 at 83-85, 95-96.

Boston and that Mansueto often saw or called Manzi when Mansueto was in Boston.³⁶⁹

Further, there is abundant evidence that Mansueto had at least the following contacts with Endicott Peabody in the pursuit of the UMass/Boston contract:

- Mansueto attended the luncheon on October 1, 1969 in New York with Peabody, Lambert, and McKee at which Peabody was asked, and at which Peabody agreed, to help MBM in MBM's efforts to obtain the UMass/Boston contract.³⁷⁰
- Mansueto attended the October 2, 1969 luncheon in Boston with Peabody, Heyman, Gordon, and Goldings at which Peabody explained why UMass (with which Gordon and Goldings were affiliated) would benefit from MBM's services on the UMass/Boston project.³⁷¹
- Mansueto was sent a letter dated October 7, 1969 in which Peabody referred to the October 1 and October 2, 1969 luncheon meetings, discussed a meeting that Peabody had had with BBC Director Poitras about MBM's interest in the UMass/Boston contract, and enclosed minutes of meetings of the UMass Buildings and Grounds Committee. Peabody also wrote in the

³⁶⁹ Mansueto testimony, P.A. 6/9/78 at 87-88.

³⁷⁰ See discussion supra.

³⁷¹ See discussion supra.

letter, "If you [Mansueto] will keep me informed as to the current status of your negotiations, I will be able to check on it weekly."³⁷²

- Mansueto was sent copies of Peabody's letter dated October 29, 1969 to BBC/DSB official Kussman about MBM's interest in the UMass/Boston contract.³⁷³
- Mansueto spoke with Peabody on December 3, 1969 about the UMass/Boston contract. ³⁷⁴ December 3, 1969 was the day when MBM made its presentation to the Designer Selection Board.³⁷⁵
- Mansueto spoke with Peabody on December 12, 1969 and December 16, 1969 about the UMass/Boston contract.³⁷⁶ They discussed Peabody's conflict of interest and inability to continue representing MBM in regard to obtaining the UMass/Boston contract, according to Peabody.³⁷⁷
- Mansueto spoke with Peabody on December 19, 1969 about the UMass/Boston contract.³⁷⁸ According to Jack Thomas, Mansueto reported that Peabody had told Mansueto the status of MBM's application for the UMass/Boston contract, and finally the fact that MBM had been awarded the contract.³⁷⁹

372 Letter dated October 7, 1969 from Endicott Peabody to Anthony E. Mansueto, concerning contacts to be made on behalf of MBM.

373 A blind copy of the letter dated October 29, 1969 from Endicott Peabody to Fred[erick J.] Kussman was designated for Mansueto. Mansueto apparently also was sent, by McKee, a copy of the letter.

374 Mansueto pocket diary 12/3/69.

375 See discussion supra.

376 Peabody telephone records. See discussion supra. See also Mansueto testimony, P.A. 5/28/78 at 15.

377 See discussion supra.

378 See discussion supra.

379 Thomas 12/14/79 written statement, concerning the 1969 MBM Christmas party and the BBC Kick-off meeting.

- Mansueto attended a December 24, 1969 meeting with Peabody, McKee, and Lambert in New York.³⁸⁰ Mansueto was then sent a copy of a letter dated December 26, 1969 from Lambert which recounted the agreement discussed at the December 24, 1969 meeting -- that the Peabody firm would receive \$17,500 as a fee "for services rendered in connection with obtaining the construction management contract with the University of Massachusetts."³⁸¹

The Commission wished to question Mansueto and obtain his testimony under oath about these matters, particularly in light of Mansueto's prior testimony that he "didn't know Governor Peabody was involved" in MBM's attempt in 1969 to win the UMass/Boston contract;³⁸² that Peabody gave no assistance whatsoever in securing the UMass/Boston contract;³⁸³ and that Mansueto called Peabody in 1969 was because Peabody "was a friend since 1964 ... a personal friend."³⁸⁴

The Commission made every attempt to obtain Mansueto's testimony, but Mansueto refused to appear and testify before the Commission. Mansueto was advised that his refusal to testify violated the agreement that Mansueto (with counsel) had made in 1978 with the Massachusetts Attorney General pursuant to which the Commonwealth granted Mansueto non-prosecution status.³⁸⁵ Mansueto maintained his refusal to testify.³⁸⁶

³⁸⁰ Mansueto "Month-At-A-Glance" calendar, 12/24/69; Mansueto testimony, P.A. 6/9/78 at 129.

³⁸¹ Letter dated December 26, 1969 from Jeremiah D. Lambert to Gerald J. [sic] McKee, Jr. (cc: Anthony Mansueto) re: "revised fee arrangements."

³⁸² Mansueto testimony, P.A. 5/23/78 at 27.

³⁸³ Mansueto testimony, 8 M/M 2/22/79 at 65. See also Mansueto testimony, 5 M/M 2/16/79 at 49; P.A. 5/23/78 at 25-27, 31.

³⁸⁴ Mansueto testimony, P.A. 6/9/78 at 101. See also Mansueto testimony, P.A. 5/23/78 at 13-15.

³⁸⁵ Letter dated March 14, 1978 from Massachusetts Attorney General Francis X. Bellotti to William F. Looney, Jr. and Paul F. Markham, concerning a non-prosecution agreement for Anthony E. Mansueto.

³⁸⁶ See Sp. Comm. 6/27/80 at 4-5.

CHAPTER V

EVIDENCE RELATING TO WHETHER MBM OBTAINED
THE UMASS/BOSTON CONTRACT THROUGH A
CORRUPT AGREEMENTIntroduction

Since at least 1971, people have speculated about whether MBM obtained the UMass/Boston contract through a corrupt agreement. The Commission, as required by law, has conducted an intensive investigation into the matter.

The Commission received a considerable body of evidence suggesting that MBM was awarded the UMass/Boston contract in return for MBM's prior commitment to make tens of thousands of dollars of illegal cash payments to fundraisers for the gubernatorial administration then in office. The evidence is essentially of four types:

- (1) Evidence that it was the practice of the administration to award such contracts on that basis;
- (2) Evidence that MBM officials admitted to others that MBM made such a commitment, and that a fundraiser for the administration repeatedly complained that MBM was slow in living up to its commitment on the UMass/Boston contract;
- (3) Evidence that MBM generated tens of thousands of dollars in cash for payment to politicians; and
- (4) Evidence that MBM paid tens of thousands of dollars in cash to a fundraiser for the administration after MBM won the UMass/Boston contract.

The Commission did not receive direct testimony of such an agreement from any participant in regard to the MBM-UMass/Boston contract. The man who awarded the contract to MBM refused to testify and stayed out of Massachusetts in order to avoid service of process which could have compelled him to testify. The MBM official who coordinated MBM's efforts to win the contract did the same. The fundraiser alleged to have exacted and followed up on the commitment spent weeks attempting to persuade courts to permit him to avoid complying with validly served Commission summons and then, after losing the legal battle, finally appeared before the Commission and asserted his constitutional privilege against self-incrimination.

The Commission was mandated by law not only to investigate the award of the MBM-UMass/Boston contract but also to file a public report of the evidence produced by the investigation. Accordingly, the present chapter sets forth the four types of evidence outlined above.

Evidence That Contracts Were Awarded by the Volpe and Sargent
Administrations in Return for Prior Commitments By the Winning
Firms to Make Illegal Cash Payments

In addition to investigating MBM's activities in Massachusetts, the Commission has investigated ways in which other contracts were awarded by the Commonwealth during

the time frame applicable to MBM's UMass/Boston contract. Other portions of this Final Report discuss in depth the evidence from those other investigations. For present purposes, one of those other cases -- the "DMJM" case -- will be summarized briefly (and without footnotes). The DMJM case is related to the MBM case for reasons that will become apparent. Readers are referred, for further information, to the detailed treatment of the DMJM case elsewhere in this Final Report and also to the discussions of the awarding of such contracts as the ones for the Connelly School and the Gentile School.

DMJM -- the architectural firm Daniel Mann Johnson & Mendenhall -- was selected on July 9, 1968 by A & F Commissioner Anthony P. DeFalco as the winner of a contract to design a new campus for the Holyoke Community College. DMJM received a "continued services" contract in October 1972, through the approvals of BBC Director Walter J. Poitras, A&F Secretary Robert L. Yasi, and Transportation & Construction Secretary Alan Altshuler. Pursuant to those contracts, DMJM to date has received approximately \$1.7 million in fees.

According to testimony before the Commission, DMJM was selected for the contracts as the result of an arrangement that DMJM made with Albert Manzi, a fundraiser for Governor John A. Volpe and for Volpe's successor Francis W. Sargent. Testimony and documentary evidence presented to the Commission indicate that DMJM gave at least \$36,000 in cash to Manzi pursuant to a commitment by DMJM to make such illegal payments in return for receiving the Holyoke Community College work.

In brief, the evidence is as follows. DMJM was interested in 1968 in receiving the architectural contract for the new Holyoke Community College campus that was to be built. As an out-of-state firm, DMJM had been unsuccessful in pursuing other Massachusetts state contracts and recognized that its chances for the Holyoke Community College contract would be enhanced if it could link itself with a firm based in Massachusetts. DMJM's lack of success in seeking Massachusetts state contracts on its own was not unique; some 97 percent of the finalists selected by the state's Designer Selection Board for architectural contracts had been Massachusetts firms.

DMJM asked for assistance from the Worcester architect Frank R. Masiello, Jr. Masiello was well-connected politically and had been successful in obtaining Massachusetts state contracts. DMJM offered Masiello consulting contracts in return for Masiello's assistance in making the necessary introductions and arrangements for the Holyoke Community College contract.

Masiello felt that DMJM was clearly qualified for the contract and should be

able to obtain it on the merits with the aid of introductions to responsible officials at the Massachusetts Bureau of Building Construction and Office of Administration & Finance. But shortly after a Masiello-arranged meeting of DMJM officials with A&F Commissioner Anthony P. DeFalco -- who had the legal authority for awarding the Holyoke Community College contract -- Masiello received a telephone call from Republican fundraiser Albert P. ("Toots") Manzi. Manzi summoned Masiello to Manzi's Worcester grocery store. After meeting at the market, Manzi and Masiello drove to an ice cream stand where Manzi berated Masiello for trying to help DMJM win the Holyoke Community College contract behind Manzi's back. Manzi told Masiello that if DMJM wanted to win the contract, it would have to make a large political contribution. Masiello testified to the Commission that he

"understood [Manzi] to mean that the political contribution was a guise of a payment of money to obtain a contract for which a firm was under consideration..."

Masiello testified further that he had obtained contracts for the Masiello architectural firm pursuant to such arrangements with Manzi on prior occasions.

Aware of Manzi's power to influence the award of architectural contracts by the administration, Masiello advised the DMJM firm that Manzi could control the fate of the Holyoke Community College contract depending upon whether DMJM would meet Manzi's demands. DMJM decided to pay for the contract but asked Masiello to negotiate with Manzi so that DMJM could pay less than the \$70,000-\$80,000 that Manzi had initially demanded. After discussions between Manzi and Masiello, Manzi agreed to accept \$22,000 from DMJM, so long as the money came in cash. The money would be paid in installments, starting after DMJM received its first fees from the Holyoke Community College contract. DMJM agreed, and the initial contract was awarded by A&F Commissioner DeFalco.

For reasons not necessary to detail here, Manzi eventually demanded more money from DMJM, and successive agreements were reached to increase the total payments first from \$22,000 to \$27,000, and then to 5% of DMJM's fees on the project (for a total of at least \$65,000).

The Commission received evidence that DMJM paid at least \$36,000 in cash to Manzi between 1969 and 1972. The payments were as follows, according to testimony and documents:

- \$5,000 in April 1969, by means of a DMJM check to Masiello, with the proceeds of the check being delivered in cash by Masiello's brother to Manzi at the Massachusetts Turnpike Authority. (Manzi was a member of Turnpike Authority, having been appointed by Governor Volpe.)

- \$6,000 in the fall of 1970, delivered in \$5-bills by DMJM's Barry Mountain to Manzi at Manzi's market. Masiello's brother later converted the cash into larger denomination bills, while Manzi waited in an automobile outside the bank.
- \$15,000 on January 17, 1972 in the form of five \$3,000 cashier's checks handed by Mountain to Manzi in the presence of Masiello's brother.
- \$10,000 on November 7, 1972, by means of cash given by DMJM's Stanley Smith to Masiello's brother to Manzi.

The long hiatuses between these payments angered Manzi, who made dunning telephone calls to Masiello, threatening to hold Masiello responsible for commitments not met by DMJM. When Manzi could not reach Masiello, he called Masiello's brother with similar messages. The pressure became so intense that Masiello's marriage was jeopardized and Masiello finally moved to Florida.

As discussed in the ensuing sections of this chapter, there is substantial evidence that the same pattern was followed with regard to MBM and the UMass/Boston project management contract. Several witnesses testified to the Commission of hearing from MBM officials and from Manzi that MBM had a commitment to make cash payments to Manzi in relation to the UMass/Boston contract. MBM officials and other witnesses testified of dunning telephone calls and heated meetings in which Manzi demanded that MBM keep its commitments. Moreover, MBM officials and another witness testified that MBM did in fact pay Manzi tens of thousands of dollars in relation to the UMass/Boston contract. In addition, the Commission received evidence that MBM obtained contracts in other states in return for similar commitments.

Before turning to these other types of evidence, it should be mentioned that MBM received a subcontract from DMJM to provide cost estimating services on the Holyoke Community College project.¹ It should also be noted that on July 24, 1968 -- two weeks after DMJM won the architectural contract for Holyoke Community College -- MBM Vice President Mansueto wrote² to his assistant:

"I spoke to [Frank] Masiello on Monday July 22, and he advised me of the following:

¹ See, e.g., letter dated July 29, 1969 from BBC Director Horace M. Chase (signed by Acting BBC Director Walter J. Poitras) to Daniel Mann Johnson & Mendenhall approving DMJM's request to employ MBM for estimating on the Holyoke Community College project.

² MBM internal memorandum dated July 24, 1968 from Anthony E. Mansueto to Ivan Soskel re: "Massachusetts and other considerations."

- "1. DMJM has been requested through our Massachusetts political friends to use MBM on their new Holyoake [sic] College project... BBC will soon be advised that we are to be the cost consultants for this project. Frank M. suggests that we wait until after July 29 before we approach BBC on their CPM program, since our political friends will be talking to the BBC prior to that time...
- "2. I get the general impression from Frank Masiello that we are being pushed by the State people and some of the work that we have got is not as coincidental as it might seem - people are being asked to use MBM . . ."

Beyond the DMJM architectural contract, there is considerable other evidence that the Commission received of the awarding of contracts by the Volpe and Sargent administrations as a result of corrupt agreements. Such evidence is discussed elsewhere in this Final Report.

Evidence that MBM Officials Admitted to Others That MBM Made A Commitment to Pay Cash to Manzi in Connection With the UMass/Boston Contract, and that Manzi Repeatedly Complained that MBM Was Slow in Living Up to Its Commitments on the UMass/Boston Contract

Several witnesses provided the Commission with testimony that MBM made a commitment similar to the one just described as to DMJM, and several witnesses testified that Manzi repeatedly complained that MBM was slow in living up to such commitments in regard to the UMass/Boston contract. Indeed, two witnesses testified that Manzi linked MBM with DMJM in Manzi's complaints about firms that had made, but were slow in meeting, such commitments.

Testimony of
Frank R. Masiello, Jr.

Frank Masiello testified before the Commission that he introduced MBM Vice President Anthony Mansueto to fundraiser Manzi in October of 1967.³ At some time thereafter, according to Masiello, Manzi called Masiello and asked "whether or not [Mansueto] would be willing to make a political contribution if he was asked and would he follow through on his commitment."⁴ Masiello testified that he vouched for Mansueto, based upon Masiello's knowledge that "during the days of the Peabody Administration ... when [Mansueto] was asked to make political contributions he did in fact make them."⁵

⁶
In May of 1971, according to Masiello's testimony, Masiello was attending

³Testimony of Frank R. Masiello, Jr., Sp.Comm. 3/25/80 at 117. See also discussion in Chapter III, supra.

⁴Id.

⁵Id.

⁶Masiello testimony, Sp. Comm. 6/16/80 at 31-33.

a meeting of the Massachusetts Board of Registration of Architects, of which Masiello was a member. He received a telephone message to call Manzi at the Governor's office. He called Manzi there, and Manzi asked Masiello to meet Manzi at a drug store/luncheonette across the street from the State House. When they met, Manzi complained that Masiello's friends at MBM has made a commitment on the Columbia Point [UMass/Boston] project but that MBM was not living up to the commitment.⁷ During the same conversation, Manzi complained that DMJM, whom Masiello also had vouched for, was not meeting its commitments either.⁸ According to Masiello's testimony⁹--

"[Manzi] said those deadbeat friends of yours are not living up to their commitment, and he said if Tony [Mansueto] persists in going this route, he's going to have some problems in Massachusetts on his contracts. He said I would like you to get in touch with him and express to him my feelings and press upon him how important it is that he live up to the commitments he's made to us. He says I am under severe pressure from the Governor's campaign fund committee to get these funds in, and he says Tony made a commitment and like your DMJM friends they ought to keep it or he ought to keep it."

Masiello testified that he was personally upset and concerned by this conversation with Manzi, because Manzi indicated Manzi was holding Masiello personally responsible for the failure of Masiello's "friends" -- MBM and DMJM -- to live up to their commitments.¹⁰

Therefore, Masiello telephoned Mansueto and relayed Manzi's message, according to Masiello's testimony.¹¹ Masiello further testified that Mansueto said¹²--

"Well, I will take care of the commitment, but we're having problems internally and I will discuss it when I see you in person."

Masiello testified that he met with Mansueto on the following day at MBM's New York office. According to Masiello's testimony¹³ --

"I went in, and after going through the formalities of hello, how are you, I think I outlined to him exactly what Manzi told me, that there had been a commitment that Tony made, a commitment to pay a sum of money to the Sargent campaign and that it wasn't being kept. They weren't getting their payments. They were not living up to the schedule, and Tony admitted yes, he had a commitment he had made and they were having internal cash flow problems at the time and just as soon as the matter was resolved they would in turn take care of it and get caught up with [the commitment]."

Despite this conversation in 1971, however, Masiello received calls in 1972 about MBM still not having met its commitments to Manzi, according to Masiello's

⁷ Id. at 33.

⁸ Id. at 31-32; Sp.Comm. 3/26/80 at 118-119.

⁹ Id., Sp.Comm. 6/16/80 at 31-32.

¹⁰ Id. at 34-35.

¹¹ Id. at 32.

¹² Id.

¹³ Id. at 35-36.

testimony.¹⁴ Manzi, by this time, was calling Frank Masiello's brother William, and William was relaying the messages to Frank, according to Frank Masiello's testimony. For example, in October 1972, according to Frank Masiello¹⁵ --

"Bill [Masiello] was still telling me that Tony [Mansueto] wasn't or MBM or Tony or both weren't keeping their commitments that they made to Manzi, and that they were way behind in catching up, and promises that he had made to me earlier that they would get caught up in their commitments had never been kept, and Billy was constantly reminding me of the fact that my friend Mansueto wasn't keeping his word..."

And, by December of 1972, according to Frank Masiello's testimony¹⁶ --

"I got a very long, loud harassment type of call from Bill jumping all over me about Mansueto not keeping his word, still wasn't keeping his word. He was creating problems and straining [Bill's] relationship with Manzi and that because of that [Bill] was afraid that the company he bought from me, the contracts might not be honored and so forth and so on. He was on about having Tony take care of these commitments."

At around this time, Frank Masiello had additional reason to be upset with Mansueto. Masiello had given MBM entree to the annual dinner of the Big Brothers in Washington, D.C. which was attended by many high government officials. MBM was embarrassing Masiello by being months late in paying for its table at the dinner.¹⁷ Moreover, MBM and the Masiello firm were in a dispute over billings.¹⁸ Masiello finally wrote Mansueto, on the bottom of a bill that MBM had sent to the Masiello firm¹⁹ --

"Tony: We're still going around on this. By the way do you ever read my letters carefully? It's a year now and Big Brothers still haven't received your check for last year though you sent a very warm promise type letter to me in September promising payment by Oct. 1, 1972. Bill tells me your performance in Mass. is equally gratifying." [Emphasized words were triple-scored in original.]

Masiello explained, in testimony to the Commission, about the note to Mansueto:²⁰

"I guess looking back at it, I guess that was my sarcastic way of telling Tony that the members of his firm weren't at any time valued because they couldn't keep a commitment to a charitable organization, to the Big Brothers, they wouldn't keep a commitment there and from the phone calls and conversations I had with Bill, it seemed that they were doing the same thing on the political level as well as on the charitable level."

¹⁴ Id. at 38-39, 45.

¹⁵ Id. at 46.

¹⁶ Id. at 49.

¹⁷ Id. at 42-44

¹⁸ Id. at 47.

¹⁹ MBM Statement dated 10/31/72 to MBM-MAA Florida Prison Study c/o Masiello.

²⁰ Masiello testimony, Sp. Comm. 6/16/80 at 48-49.

Testimony of
William V. Masiello

Frank Masiello's testimony was corroborated by testimony of William V. Masiello before the Commission. William Masiello testified that Manzi started complaining about MBM and DMJM as early as the fall of 1970:²¹

"It was during the election 1970.... I had reason to go to the Sargent headquarters on Park Avenue in Worcester.... Mr. Manzi pulled me aside and indicated to me that both MBM and DMJM were behind in their commitments. He totally blamed my brother Frank. He blamed Frank saying that he brought -- Frank brought MBM and DMJM into the Commonwealth and they were both deadbeats."

According to William Masiello,²² Manzi said that MBM and DMJM "hadn't fulfilled their part of the deal that they had made to acquire contracts."

As discussed below, MBM officials admit that they paid Manzi \$10,00 in cash in mid-October of 1970.

In addition to testimony about Manzi's complaints after MBM won the UMass/Boston contract, William Masiello testified about a meeting with MBM's Anthony Mansueto and with Frank Masiello at Nick's Grill in Boston in late 1969 -- the year²³ that MBM won the UMass/Boston contract. According to William Masiello's testimony --

"the basic conversation was that Mr. Mansueto -- well, MBM was to pay Toots Manzi five percent of their [fixed] fee for the [U/Mass] contract."

During the conversation, it was mentioned that MBM would be paying Manzi in cash according to Masiello's testimony.²⁴ Further, the word "launder" was mentioned and, according to William²⁵ --

"[A]fter the meeting I asked Frank [Masiello] when we were alone what the word laundered meant and he explained to me what the word meant, covering up cash, how to get money through the company so it couldn't be detected either by IRS or any of the other government agencies."

William Masiello also testified about a face-to-face meeting in May of 1972 at which Manzi complained directly to MBM President McKee and MBM Vice President Mansueto (in Masiello's presence) about MBM's failure to live up to its "commitments." That testimony is discussed later in this chapter, along with testimony by McKee and Mansueto acknowledging that there was such a meeting and that Manzi complained about MBM not meeting its "commitments."

²¹ Testimony of William V. Masiello, Sp. Comm. 6/24/80 at 48.

²² Id., 5/12/80 at 33.

²³ Id. 6/24/80 at 7-8.

²⁴ Id. at 8. Frank Masiello did not testify about such a meeting. Cf. testimony of Frank Masiello Jr., Sp. Comm. 6/16/80 at 34.

²⁵ Id. at 8-9.

Testimony of
Daniel J. Shields

Daniel Shields, an MBM official from 1971 to 1973,²⁶ testified that MBM President McKee characterized Albert Manzi as a "five percenter," which Shields understood to mean a person who would receive 5 percent of a contract's value if his efforts helped in winning the contract.²⁷ Shields further indicated that he learned from McKee that Manzi had helped MBM win the UMass/Boston contract.²⁸

Testimony of
William F. Harding

William F. Harding, an MBM salesman from 1971 to 1974,²⁹ testified that he learned that Mansueto had made a commitment to a person in Worcester that MBM would make a large political contribution -- probably about \$200,000 -- to Governor Sargent's campaign if MBM were awarded the UMass/Boston contract.³⁰ Harding was unsure who told him this, although he suggested that it might have been Shields who might, in turn, have learned it from McKee.³¹ According to Harding, only \$40,000 to \$50,000 of the promised "contribution" was paid, and the fundraiser was dissatisfied.³²

Testimony of
Stanley Davis

Stanley Davis was an employee in 1969 of Seelye Stevenson Value & Knecht,³³ the firm that made -- and then dropped out of -- a joint venture proposal with MBM for the UMass/Boston contract.³⁴ Davis testified to the Commission that he was told by William Knecht, the head of the Seelye firm in 1969, that payoffs or political contributions in the range of \$50,000 to \$150,000 were going to be required to obtain the UMass/Boston contract. Davis said that he does not recall if he was told that the \$50,000 - \$150,000 was to be the total payoff from McKee or Mansueto (Davis did not recall which), and that Knecht's unwillingness to participate in such an arrangement caused the Seelye firm to withdraw from the proposed joint venture.³⁵ The Commission could not obtain Knecht's testimony, since Knecht died several years ago.

MBM President McKee disputed Davis's account when McKee testified before the Commission. McKee said that a former Seelye employee named William Alexander would corroborate McKee's testimony that Seelye withdrew from the venture when, and because, the DSB split the site

²⁶ Shields testimony, Sp.Comm. 6/2/80 at 8.

²⁷ Id. at 95-96.

²⁸ Id. at 93-94.

²⁹ See Chapter X, infra.

³⁰ Harding testimony, Sp. Comm. 6/4/80 at 26-27, 29.

³¹ Id. at 27-28.

³² Id. at 28.

³³ Testimony of Stanley Davis, Sp. Comm. 5/29/80 at 22-23.

³⁴ See discussion in Chapter IV, supra.

³⁵ Davis testimony, Sp. Comm. 5/29/80 at 24-25.

development work from the project management contract.³⁶ McKee was asked orally at the hearing,³⁷ by formal letter after the hearing,³⁸ to provide Mr. Alexander's address so that the Commission could contact him. McKee never responded to the requests.

It should be noted that Stanley Davis worked briefly for MBM in 1970-71 and left due to policy conflicts.³⁹ On the other hand, Davis was contacted by the Commission in regard to the DiCarlo-MacKenzie case⁴⁰ and unexpectedly volunteered the unrelated information about the Knecht conversation on two occasions, six months apart.⁴¹

Davis's testimony is, of course, hearsay. It is set forth in recognition of the Commission's responsibility under legislative mandate to report fully all evidence regarding the means by which MBM obtained the UMass/Boston contract. The Commission, as elsewhere in this report, makes no finding of credibility.

Affidavit of
Maurice Khoury

Maurice Khoury was the Chairman of the Board of International Management Services, MBM's parent company, for several years in the early 1970's.⁴² In a sworn affidavit, dated June 24, 1980, Khoury stated that McKee told him "that large amounts of money had to be paid to government officials in order for MBM ... to receive or retain particular contracts." Khoury stated that McKee told him that large payments of this nature were required "for obtaining or retaining a contract at or for the University of Massachusetts Boston campus. On one occasion, for example, Mr. McKee told [Khoury] that \$20,000 was necessary for that purpose." Khoury added that he provided off-the-books cash for payments of this type at McKee's request.⁴³ Khoury's affidavit and McKee's denials are considered at length later in this chapter.

Evidence That MBM Generated
Tens of Thousands of Dollars in Cash
For Payment to Politicians

The Commission received considerable evidence, much of it from testimony by MBM officials and from documents found in MBM's files, that MBM generated tens of

³⁶ McKee testimony, Sp. Comm. 6/26/80 at 135.

³⁷ Id. at 143-144.

³⁸ Letter dated June 26, 1980 from Bancroft Littlefield, Jr. to James F. Ryan, counsel to McKee.

³⁹ Davis testimony, Sp. Comm. 5/29/80 at 6.

⁴⁰ See discussion in Chapter VII, infra.

⁴¹ Notes of Stanley Davis interview 12/11/79 by Commission staff, at 1,3; 5/28/80 Davis interview

⁴² Affidavit dated June 24, 1980 executed by Maurice Khoury in Beirut, Lebanon, at 1.

⁴³ Id.

thousands of dollars in cash for payment to politicians. It is important to review that evidence in some detail in order to have a basis for evaluating testimony by McKee and Mansueto that MBM was not in the practice of making payments to politicians or political fundraisers⁴⁴ and that MBM did not make a commitment prior to obtaining the UMass/Boston contract -- or any other contract anywhere else -- that MBM would make such payments in return for being awarded the contract.⁴⁵

Cash Generation and
Questionable Accounting Practices
By MBM

The Commission's analysis of the available books and records of MBM reveals at least eight (8) different methods by which MBM concealed the true nature of payments that MBM officials have admitted went to politicians or political fundraisers. Those methods will be summarized briefly here, each with a specific example of its use. In several cases, more complete discussion can be found elsewhere in this Report. Here, then, are brief descriptions of the eight methods:

1. MBM made a corporate check payable directly to a political figure. An example is MBM corporate check #1812 for \$2,000 made payable in October 1970 to then State Senator Kevin B. Harrington.⁴⁶

2. MBM made a corporate check payable to an intermediary, who then endorsed the check to a political figure or political campaign. For example, MBM \$2,000 corporate check #1822 in October 1970 was made payable to William Masiello, who endorsed the check to Senator James A. Kelly, Jr., who in turn endorsed the check to the Kevin White for Governor Committee.⁴⁷ MBM intended this money to go to the White campaign.⁴⁸

3. By prior agreement, bills incurred for services for political figure, a political campaign, or a political committee were sent directly to the corporation, which paid them as if the services had been rendered to the corporation. Thus, in 1972, MBM's wholly-owned subsidiary, MCM, used corporate checks to pay invoices submitted to MCM by the Philadelphia Letter Shop, Inc. for printing that was actually done for the Philadelphia Democratic City Committee.⁴⁹

44 McKee testimony, 6 DiC 2/1/77 at 51-52; Sp.Comm. 6/26/80 at 97-98. Mansueto testimony, 9 DiC 2/4/77 at 100.

45 McKee testimony, Sp.Comm. 6/26/80 at 14-18, 76-79, 122. Mansueto testimony, P.A. 5/23/78 at 110.

46 See discussion of this check infra and in P.A. Report at 60-79.

47 See discussion of this check infra and in P.A. Report at 60-72.

48 Mansueto testimony, P.A. 5/23/78 at 53-55.

49 McKee testified that he learned about these indirect political payments in 1973. McKee testimony, 6 DiC 2/1/77 at 184-185.

4. A corporate check was falsely identified on the company's books as a loan to an officer, while the proceeds of the check were actually transmitted to a political figure. For example, MBM check #2817 dated January 20, 1972 for \$5,000 was made payable to cash and charged on MBM's books as a loan to McKee. The proceeds of this check were given by McKee to Massachusetts State Senator Ronald C. MacKenzie.⁵⁰

5. A corporate check was falsely identified on the company's books as an advance to an officer, with the proceeds of the check being transmitted to a political figure or political campaign. The alleged October 16, 1970 payment of \$10,000 to Manzi for the Sargent campaign was cash generated by MBM corporate check #1820 identified as an advance to Mansueto.⁵¹

6. A corporate check payable to cash was given to an intermediary who negotiated the check and then wrote his personal check to a political figure or political campaign. MBM corporate check #2325 for \$1,000 dated April 21, 1971 payable to cash was deposited at the direction of Endicott Peabody into Peabody's personal bank account in Washington, D.C. Peabody then wrote a personal check for \$1,000 to buy tickets on MBM's behalf to a testimonial "brunch" for David M. Bartley,⁵² then Speaker of the Massachusetts House of Representatives.

7. A corporate check of a company affiliate or subsidiary was made payable to cash with the cash given to a political figure or campaign. Half of MBM's \$10,000 cash payment to Masiello for Manzi on May 23, 1972 was composed of the proceeds of a \$5,000 check payable to cash, written on the account of Equipment Development, Inc., a wholly owned subsidiary of MBM.⁵³

8. A company employee submitted a false expense report on the instruction of his superiors, was "reimbursed" by the company, and then used the reimbursement to cover personal checks or furnish cash to political figures. Former MCM comptroller Peter T. Pallotta provided evidence to the Commission that he filed false expense reports in 1972 and used the "reimbursements" to generate cash which was given⁵⁴ to certain political figures in accordance with directions from his superiors.

In each of the foregoing methods, corporate funds were conveyed to politicians or political campaigns.⁵⁵ Such contributions have been illegal in Massachusetts since 1946.⁵⁶

⁵⁰ See discussion infra.

⁵¹ See discussion later in this chapter.

⁵² See discussion infra in Chapter VII.

⁵³ See discussion later in this chapter.

⁵⁴ Notes of 7/25/79 interview of Peter T. Pallotta by Special Commission staff, at 1.

⁵⁵ For further discussion, see O'Neill testimony, Sp.Comm. 6/25/80.

⁵⁶ See G.L., c. 55 §. 8.

MBM had a ledger account entitled "Political Contributions."⁵⁷ The Commission, despite intensive investigation, did not find a single entry in that account,⁵⁸ even though MBM's check vouchers for some of the political payments admitted by MBM officials contained the notation: "Political Contribution."⁵⁹

Another method for generating cash was alleged by Maurice Khoury, the Chairman of the Board of MBM's parent corporation for several years in the 1970s. That procedure is discussed later in this chapter. Before turning to it, some general comments about MBM's financial records are in order.

The bookkeeping and accounting procedures that MBM used for the purpose of disguising political payments were, in some instances, extremely complicated. A brief discussion of them would be confusing, and an extended discussion is probably not of much interest to the general reader. Suffice it to say that payments that actually went to Massachusetts State Senators Joseph J.C. DiCarlo and Ronald C. MacKenzie, for example, gave rise to complex and convoluted entries resulting in charges to MBM affiliates in the Middle East. Readers interested in a more detailed analysis are referred to the testimony before the Commission of a senior financial analyst from the Commission's staff who studied the available books and records of MBM and MBM's affiliates.⁶⁰

For present purposes, the following observations may be helpful. MBM had several wholly-owned subsidiaries and one foreign affiliate that it owned in conjunction with MBM's parent company, International Management Services, Inc. (IMS). IMS, in turn, had other wholly-owned subsidiaries overseas. A chart prepared by the Commission illustrates the corporate structure.⁶¹

57 McKee testimony, 6 DiC 2/1/77 at 64-70. See also O'Neill Exhibit 5, a page from MBM's Table of Accounts, Sp.Comm. 6/25/80 at 15.

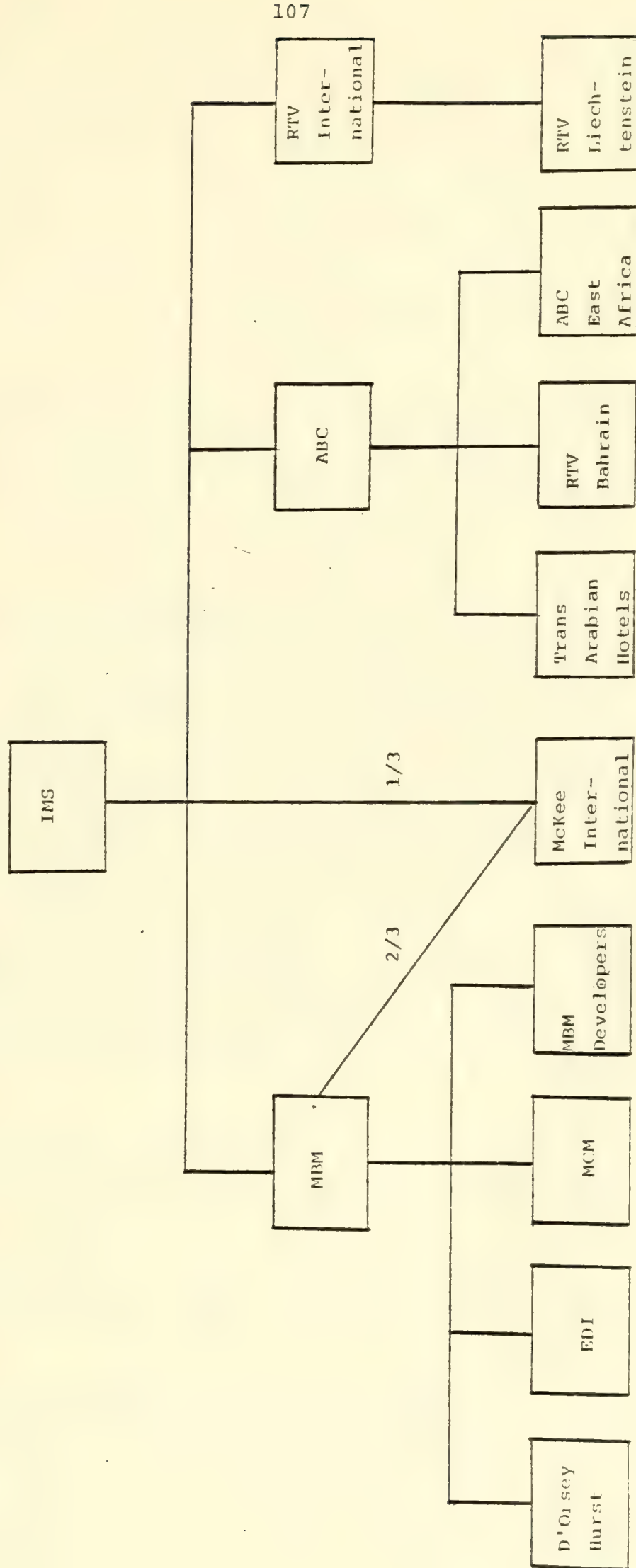
58 Testimony of Commission financial investigator James J. O'Neill, Sp.Comm. 6/25/80 at 19.

59. See, e.g., vouchers for voided MBM check #1813 dated 10/19/70 for \$2,000 payable to Kevin White, and for voided MBM check #1821 dated 10/19/70 for \$4,000 payable to William Masiello, introduced as William Masiello Exhibits 9 and 11, Sp.Comm. 6/25/80 at 30, 32.

60 See testimony of James J. O'Neill, Sp. Comm. 6/25/80.

61 Chart prepared by Special Commission staff from MBM corporate documents. IMS did not formally acquire MBM until December 1972, but this arrangement existed de facto, if not de jure, at least as of April 1972.

PARTIAL CORPORATE STRUCTURE AS OF 1972



The Commission, after considerable effort, managed to identify nearly fifty different bank accounts used by MBM and its affiliates during the period 1969 through 1973,⁶² and it is entirely likely that additional accounts existed.⁶³ Although the Commission scrutinized more than 10,000 MBM checks, there are thousands more that were not available to the Commission.⁶⁴ Similarly, many of the books and records of MBM and its affiliates were not available to the Commission.⁶⁵ In addition, the Commission was unable to obtain complete personal banking records of McKee and Mansueto.⁶⁶ Thus, the Commission could not determine how McKee and Mansueto had disposed of more than \$200,000 in unrepaid "loans" and "advances" that they had received from MBM.⁶⁷

Thus, there may have been instances of cash generation by MBM that were undetectable from the limited records available to the Commission. And, indeed, there were several leads that financial analysts for the Commission followed but lacked evidence to reach a final determination about.⁶⁸

In an attempt to convince the Commission that there were no other generations of cash used for political payments, MBM President McKee had several meetings with Commission staff⁶⁹ and wrote a letter⁷⁰ in which he said:

"I think the records and documents which you have seen, buttressed by testimony from the many people responsible for the financial and accounting work at MBM, demonstrate that a scenario of laundering through these transactions is not credible. I call your attention again to the fact that MBM certified audits exist for the periods in question."

⁶² See chart entitled "Partial List of Bank Accounts of MBM and Affiliated Companies, 1969-1973," introduced as O'Neill Exhibit 2, Sp. Comm. 6/25/80 at 13.

⁶³ O'Neill testimony, Sp. Comm. 6/25/80 at 13.

⁶⁴ It may well be that the checks no longer exist.

⁶⁵ O'Neill testimony, Sp. Comm. 6/25/80 at 13.

⁶⁶ They furnished some, but not all, of the records. See letter dated August 23, 1979 from Mansueto's secretary Cathy Palkowski to the Commission; letter dated April 2, 1980 from Gerald McKee, Jr. to National Bank of North America. Their banks apparently no longer have the records, not even on microfilm.

⁶⁷ From 1969 through 1972, McKee received \$188,041.12 and Mansueto received \$29,579.57 of "loans" which were not repaid and/or "advances" which could not be linked by Commission staff with particular travel or entertainment expenses. See chart introduced as O'Neill exhibit 14, Sp. Comm. 6/25/80 at 35, and O'Neill testimony, id. at 32-37.

⁶⁸ The Commission is not suggesting that any payments to politicians were made in connection with a series of \$6,600 and \$7,500 checks that attracted attention in the public press some years ago. The Commission investigated those checks intensively and found no evidence linking those checks to illegal political payments. See O'Neill testimony, Sp. Comm. 6/25/80, at 45-49.

⁶⁹ McKee interviews with Commission staff on August 30, 1979, February 5, 1980 and April 3, 1980.

⁷⁰ Letter dated August 25, 1980 from Gerald McKee, Jr. to the Commission.

The Commission sought corroboration of this from Arthur O. Hirshberg, the certified public accountant with Laventhol & Horwath who had been involved with the yearly audits of MBM back at least to 1969. Hirshberg disagreed with McKee's letter and summarized his disagreement in a memorandum which Hirshberg submitted to the Commission on Laventhol & Horwath's behalf.⁷¹ The memorandum began by citing relevant sections of the Codification of Statements on Auditing Standards issued by the American Institute of Certified Public Accountants' Auditing Standards Board (AU Section). Here are some of the sections as quoted by Hirshberg:

"The financial statements [are] the representations of management. The transactions which should be reflected in the accounts and in the financial statements are matters within the direct knowledge and control of management. The auditor's knowledge of such transactions is limited to that acquired through his examination. Accordingly, the fairness of the representations made through financial statements is an implicit and integral part of management's responsibility."

. . .

"[T]he auditor's examination, based on the concept of selective testing of the data being examined, is subject to the inherent risk that material errors or irregularities, if they exist, will not be detected....Certain acts, such as collusion between client personnel and third parties or among management or employees of the client, may result in misrepresentations being made to the auditor or in the presentation to the auditor of falsified records or documents that appear truthful and genuine."

The Laventhol & Horwath memorandum concluded with the following comments:

"It follows from the above that an auditor's unqualified opinion on financial statements does not imply that every item in the financial statements has been verified in detail. The unqualified opinion is on the fair presentation of the financial statements taken as a whole. The details, accuracy and authenticity of the financial records and the financial statements themselves remain the responsibility of management.

"It should be further noted that Laventhol & Horwath in no instance gave an unqualified opinion on the financial statements of McKee-Berger-Mansueto, Inc. and Subsidiaries for the years ended April 30, 1972, December 31, 1973 and December 31, 1974."

⁷¹ Memorandum dated June 17, 1980 from Arthur O. Hirshberg to the Commission concerning auditing standards.

Alleged Cash Generation
for MBM by Maurice Khoury

MBM during the 1970s was affiliated with -- and for several years was a wholly-owned subsidiary of -- International Management Services, Inc. ("IMS").⁷² Because the Commission did not have access to the books and records of IMS and of IMS subsidiaries which might have generated cash for use by MBM, the Commission sought to locate IMS's Chairman of the Board, Maurice Khoury. Khoury is a native Palestinian who was educated in universities in London and Beirut.⁷³ Commission staff located Khoury in Beirut and interviewed him in London in May 1980. Khoury then executed a sworn affidavit for the Commission, since he was unable to come to the United States to testify.

According to Khoury's sworn affidavit,⁷⁴ "[MBM President] McKee ... on numerous occasions told me [Khoury] that large amounts of money had to be paid to government officials in order for MBM and/or MCM to receive or retain particular contracts." Khoury swore that McKee had told him about "large payments to government officials in return for obtaining or retaining a contract at or for the University of Massachusetts Boston campus. On one occasion ... McKee told me [Khoury] that \$20,000 was necessary for that purpose." Furthermore, Khoury asserted, "McKee told me [Khoury] that large payments -- I believe of \$100,000 or \$150,000 -- had to be made to public officials in order for MBM to obtain or retain a contract with or for the Chicago Board of Education. I believe that Mr. McKee said that \$50,000 had to be paid in advance of obtaining the contract and the rest later." In addition, according to Khoury, McKee had discussed with him "payments to public officials in connection with obtaining or retaining an MCM contract regarding the Philadelphia International Airport."

Khoury's affidavit also included allegations about the sources of funds for the political payments that MBM was making. According to Khoury, "on many occasions Mr. McKee told me [Khoury] that political payments ... had to be made in cash and could not be reflected on the books of account of MBM or MCM." Furthermore, Khoury stated that "McKee said it was necessary -- if MBM or MCM were to obtain or retain those contracts -- that I [Khoury] supply cash or cash equivalents to him [McKee] that would not be recorded on the MBM or MCM books." According to Khoury, he complied with McKee's requests and instructions to make funds available to McKee by employing at least two different methods:

⁷² See discussion in Chapter II, supra.

⁷³ Khoury 5/26/80 interview.

⁷⁴ Affidavit dated June 24, 1980, executed by Maurice Khoury in Beirut, Lebanon.

"One method consisted of my writing a check on one of my personal bank accounts and making it payable to Mr. McKee as an individual. Mr. McKee told me that such sums were understood not to be personal loans but rather to be means by which political payments could be effectuated. Another procedure involved me -- whether personally or through a company with which I was affiliated such as Associated Business Consultants ("ABC") -- making cash or cash equivalents (such as bank checks) available to Mr. McKee which would not be processed through any bank account of MBM or MCM and would not be reflected on MBM or MCM books of account."

Khoury stated that the procedures making funds available to McKee "often involved many thousands of dollars -- even tens of thousands of dollars in a single transaction," and that some of these transactions occurred in 1972 and 1973. Finally, Khoury said that "[t]o disguise further some [of these] transactions, Mr. McKee requested that I [Khoury] execute certain documents such as loan or borrowing agreements which did not accurately reflect the nature of the transaction."⁷⁵

In testimony before the Commission, MBM President McKee agreed with many of the statements made by Khoury in his affidavit. McKee admitted that from 1971 through 1973 he and Khoury talked "fairly continuously" about their "mutual business."⁷⁶ Those discussions between McKee and Khoury took place in New York, Lebanon, Algeria, and Kuwait, among other places.⁷⁷ McKee conceded that Khoury obtained large sums of money for IMS, MBM, and their affiliates both in equity investments and in loans -- sums in the hundreds of thousands of dollars.⁷⁸ McKee also agreed that Khoury on occasion made checks or wire transfers payable to McKee personally, payments that were not reflected on MBM's books; however, McKee claimed that these were for expense advances or for McKee to deposit in Khoury's account.⁷⁹ In addition, McKee admitted that it was "possible" that he and Khoury executed loan agreements which did not accurately reflect the nature of the transactions.⁸⁰ McKee further testified that it was "quite likely" that he had told Khoury that he [McKee] had made large "payments ... to public officials in the United States in cash," since McKee had indeed made such payments and testified to them previously.⁸¹

⁷⁵ Id.

⁷⁶ McKee testimony, Sp. Comm. 6/26/80 at 110.

⁷⁷ Id.

⁷⁸ Id. at 110-112.

⁷⁹ Id. at 112-113.

⁸⁰ Id. at 124-125.

⁸¹ Id. at 114.

McKee denied, however, that he had told Khoury about any such payments other than the ones McKee had previously testified about since, according to McKee, there were no other political payments.⁸² McKee specifically denied having told Khoury that large payments had to be made to public officials in order for MBM to obtain or retain a contract with or for the Chicago Board of Education, because "in fact no such payments were required to be made."⁸³

McKee further denied that any of the money that was transferred by Khoury to McKee personally or to any of MBM's affiliated companies was used for political purposes or to make payments or contributions to political figures in the United States.⁸⁴ He also denied having told Khoury that any of the funds being transferred by Khoury to the United States were being used to pay political figures in connection with contracts.⁸⁵ McKee further denied having had discussions with Khoury to the effect that the political contributions had to be made in cash which would not be reflected on the company's books.⁸⁶

The Commission asked McKee whether he would submit to a polygraph ("lie detector") examination. McKee said he would, and a mutually-agreed-upon examiner gave the test, using mutually-agreed-upon questions.⁸⁷ The examiner was a former FBI examiner now in private practice.⁸⁸ In order to determine whether McKee was lying in denying the substance of Khoury's allegations, McKee was asked the following questions:

"Did Khoury make checks or money payable to you [McKee] personally, to pay for contracts in the United States?"

"Did Khoury make money or its equivalent available to you that did not reflect on MBM's books, to buy contracts?"

"Did you request money from Khoury to buy contracts?"

McKee was tested on these questions, answering "No" to all of them. In the opinion of the examiner, McKee's answers were untrue.⁸⁹

⁸² Id. at 115.

⁸³ Id. at 116-117.

⁸⁴ Id. at 113-117.

⁸⁵ Id. at 117.

⁸⁶ Id. at 123-124.

⁸⁷ See letter dated July 12, 1980 from Commission attorneys Michael L. Tabak and A. John Pappalardo to McKee's attorney James F. Ryan, concerning McKee's polygraph examinations.

⁸⁸ "Qualifications of Edward J. McGrath," dated October 22, 1980.

⁸⁹ Report dated June 9, 1980 of polygraph examination extended to Gerald McKee [Jr.] on June 6, 1980, prepared by Edward J. McGrath, staff examiner for Scientific Security--Raymond S. August, Inc., at 3.

The Commission recognizes that polygraph examination is an art and that its results are generally not admissible in courts of law. On the other hand, the Commission used the same polygraph examiner with other witnesses and found the examiner's conclusions generally to be supported by extrinsic evidence developed by the Commission. The Commission reaches no credibility determination and notes that McKee later took a polygraph examination that he passed. The examination was administered by an examiner engaged by McKee without the Commission's knowledge. The examiner was not briefed by the Commission and the questions were not the same as in the first examination.⁹⁰

In the course of its investigation, the Commission came upon evidence of MBM activities in states other than Massachusetts that tends to corroborate allegations in Khoury's affidavit. That evidence is discussed in Appendix B to this MBM Report.

⁹⁰ After learning that he had not "passed" the polygraph test administered by the mutually-agreed-upon examiner, McKee allegedly told the examiner that McKee believed the examiner was incompetent and that McKee was going to ask a former FBI agent to recommend a competent examiner. Several days later McKee informed the Commission that a polygraph examiner in New York had found McKee to be telling the truth. See report dated June 24, 1980 of polygraph examination extended to Gerald McKee, Jr. by Victor C. Kaufman, New York Lie Detection Laboratories; letter dated June 25, 1980 from Gerald McKee, Jr. to Special Commission Chairman John William Ward, concerning the results of McKee's polygraph examinations. The Commission then offered to make available to McKee's New York examiner the "charts" from -- and all the underlying information that had been available to -- the mutually-agreed-upon examiner in Boston. Letter dated July 12, 1980 from Commission attorneys Michael L. Tabak and A. John Pappalardo to McKee's attorney James F. Ryan, concerning McKee's polygraph examinations. McKee did not act upon the Commission's offer.

Evidence That MBM Paid at Least \$30,000 in Cash
to Republican Fundraiser Albert Manzi After MBM
Won the UMass/Boston Contract

MBM officials have testified that they made two \$10,000 cash payments to Republican fundraiser Albert Manzi after MBM won the UMass/Boston contract. The testimony of the MBM witnesses about those payments is supplemented by new evidence about the circumstances surrounding those payments and by evidence of at least one more \$10,000 cash payment by MBM to Manzi.

The October 16, 1970 Payment to
Fundraiser Albert P. Manzi

Although MBM commenced work on the UMass/Boston project in December 1969,⁹¹ the MBM-UMass/Boston contract was not actually signed until April 22, 1970.⁹² Thus, MBM did not receive any payments from the Commonwealth under the fixed fee portion of its contract until April 29, 1970.⁹³ Once the payments from the Commonwealth started, their fixed-fee component ran on the order of \$109,000 per month.⁹⁴

Anthony Mansueto's appointment calendars for 1970 contain notes to call or visit Republican fundraiser Albert Manzi on April 21, April 23, April 27, May 6, June 18, June 22, June 25, July 2, July 6, July 13, July 14, July 22, August 10, and August 11.⁹⁵ Mansueto's calendar for August 17, 1970 carries the entry: "How handle Manzi." It also says, "Call Masiello," at a telephone number identified as "Senator Kelly's office."⁹⁶ Mansueto's diary indicates a contact with Manzi again on September 11, 1970.⁹⁷ On September 16, 1970 Mansueto's pocket calendar says, "Manzi - call FM" [perhaps referring to Frank Masiello].⁹⁸

On September 29, 1970, Mansueto's diary contains the entry: "Prog Pol Cont - SB."⁹⁹ This entry may reflect a discussion with MBM Comptroller Samuel Beckerman about political contributions. On the same date, Mansueto's diary also says: "Boston...Calls: B. Masiello & Manzi re 10/13(10/14?)."¹⁰⁰ On October 9 and October 12, 1970, Mansueto's pocket calendar

⁹¹ MBM officials attended meetings with the BBC on December 22 and 23, 1969. See discussion in Chapter IV supra.

⁹² See Memorandum of Approval #70-80 dated April 22, 1970, signed by Donald R. Dwight.

⁹³ Comptroller's cards for BBC Project 601, contract No. U67-4#2A, for MBM's project management services at UMass/Boston. Payments for reimbursables started on February 25, 1970.

⁹⁴ Id.

⁹⁵ Mansueto pocket calendar, 4/21/70, 4/23/70, 4/27/70, 5/6/70, 6/18/70, 6/22/70, 6/25/70, 7/2/70, 7/6/70, 7/13/70, 7/14/70, 7/22/70, 8/10/70, 8/11/70.

⁹⁶ Id. 8/17/70.

⁹⁷ Id. 9/11/70.

⁹⁸ Id. 9/16/70.

⁹⁹ Id. 9/29/70.

¹⁰⁰ Id.

contains entries reading: "GM-Boston,"¹⁰¹ which may reflect discussions with MBM President Gerald McKee, Jr. about Boston.

On October 11 and October 12, 1970 there are entries saying, "Call Bill Masiello" and "Calls: Bill M. re 10/13 Boston."¹⁰² As discussed earlier in this chapter, William Masiello has testified that in the Fall of 1970, Albert Manzi confronted Masiello at Sargent campaign headquarters in Worcester and complained that Masiello's brother Frank had brought two "deadbeats" -- MBM and DMJM -- into Massachusetts. Manzi said that MBM and DMJM were behind in commitments that they had made to acquire contracts, according to William Masiello's testimony.

On October 13, 1970, Mansueto went to Boston.¹⁰³ He had an appointment with Manzi scheduled for 2 p.m.¹⁰⁴ Mansueto's pocket calendar for October 13, 1970 also reflects a telephone call to Endicott Peabody about political contributions.¹⁰⁵

Although Mansueto refused to appear before the Commission,¹⁰⁶ he did testify before the Post Audit Subcommittee in 1978. Mansueto said that Manzi was demanding a large "contribution" from MBM in 1970 for the Sargent-Dwight campaign¹⁰⁷ and that Mansueto called Peabody to ask his advice.¹⁰⁸ Mansueto told Peabody that Manzi had said that MBM's "dues were due."¹⁰⁹ Peabody's response, according to Mansueto, was that "the only place that people in politics could get any campaign funds from [was] from other people who worked for the Commonwealth..."¹¹⁰ Thus, Mansueto testified, Peabody recommended giving a "contribution" to the Sargent-Dwight campaign.¹¹¹ Peabody added that a "contribution" should also be given to the Democrats and that the amounts should not be "extravagant," according to Mansueto.¹¹²

¹⁰¹ Id. 10/9/70, 10/12/70.

¹⁰² Id. 10/11/70, 10/12/70.

¹⁰³ Id. 10/13/70.

¹⁰⁴ Id.

¹⁰⁵ Id.

¹⁰⁶ See Sp. Comm. 6/27/80 at 4-5.

¹⁰⁷ Mansueto testimony, P.A. 5/23/78 at 43-44.

¹⁰⁸ Id. at 44.

¹⁰⁹ Id.

¹¹⁰ Id.

¹¹¹ Id.

¹¹² Id.

Endicott Peabody has also testified about that telephone conversation. Peabody recalled that Mansueto said that the solicitation came from "the Republicans" and that Mansueto may have told him that \$10,000 was being demanded.¹¹³

Peabody also testified that he asked Mansueto whether the pressure was coming from Manzi,¹¹⁴ and that Mansueto replied that the pressure was indeed coming from Manzi.¹¹⁵ Although Peabody was the one who first mentioned Manzi's name in that conversation, Peabody testified that he did not know -- until he heard Mansueto's answer in that conversation on October 13, 1970 -- that Mansueto knew Manzi.¹¹⁶ Indeed, Peabody testified that he was unaware in 1969 when he was trying to help MBM with the UMass/Boston contract, that anyone at MBM knew Manzi.¹¹⁷

Peabody, an attorney, testified that he did not warn Mansueto that personal contributions larger than \$3,000 -- and corporate contributions of any amount -- were illegal,¹¹⁸ although Peabody knew they were illegal.¹¹⁹ Nor, according to Peabody, did he find out what MBM finally decided to do about Manzi.¹²⁰

The MBM officials involved have since testified -- (1) that MBM decided to give the full \$10,000 that Manzi sought;¹²¹ (2) that MBM regarded this as a voluntary contribution, not an extortion;¹²² (3) that the \$10,000 came from MBM corporate funds;¹²³ (4) that the payment was not charged to MBM's existing "political contributions" account¹²⁴ but instead was disguised as an advance to an MBM officer¹²⁵ which was then written

¹¹³Peabody testimony, P.A. 3/29/78 at 22-23, 89.

¹¹⁴ Id. at 92-93.

¹¹⁵ Peabody testimony, Sp. Comm. 6/19/80 at 208.

¹¹⁶ Id. at 155.

¹¹⁷ Id.

¹¹⁸ Peabody testimony, P.A. 3/29/78 at 90-91, 97.

¹¹⁹ Id. at 90, 98; Sp. Comm. 6/19/80 at 160.

¹²⁰ Peabody testimony, P.A. 3/29/78 at 23; Sp. Comm. 6/19/80 at 168.

¹²¹ McKee testimony, Sp. Comm. 6/26/80 at 52-53; Mansueto testimony, P.A. 5/23/78 at 43.

¹²² McKee testimony, Sp. Comm. 6/26/80 at 17, 53.

¹²³ McKee testimony, 6 DiC 2/1/77 at 57. MBM-Boston check #1820, dated October 16, 1970 for \$10,000 payable to Anthony E. Mansueto, was allegedly used.

¹²⁴ Testimony of Commission financial investigator James J. O'Neill, Sp. Comm. 6/25/80 at 19.

¹²⁵ MBM Cash Disbursements Book entry for check #1820; O'Neill testimony, Sp. Comm. 6/25/80 at 30.

off through the "selling, general and administrative expense" account;¹²⁶ and (5) that this \$10,000 voluntary contribution to the campaign of Governor Francis Sargent and Lieutenant Governor Donald Dwight was delivered in cash¹²⁷ within a brown paper package¹²⁸ which was transported from downtown Boston to Worcester where it was handed quickly to Albert Manzi in the back of Manzi's grocery store.¹²⁹ As discussed in Chapter VII below, Peabody allegedly did learn in February 1971 of this October 1970 payment to Manzi, and MBM -- allegedly upon Peabody's suggestion -- then put the \$10,000 check which had generated the cash into a safe deposit vault so that it was no longer located in MBM's office with MBM's other books and records.¹³⁰

Even after MBM made the \$10,000 cash payment to Manzi in October 1970, Manzi continued to press MBM for additional payments, according to Mansueto. When Mansueto pleaded MBM's poverty and satisfaction of its obligations, Manzi allegedly informed Mansueto, "You don't just give once."¹³¹

The Alleged MBM Payment to Manzi in February 1972

In February 1972, MBM generated \$21,500 in cash within the space of three days. Of that amount, \$11,500 was produced from three checks made payable to MBM official Daniel J. Shields and cashed by MBM President McKee's father (who worked in the MBM office).¹³² The other \$10,000 resulted from a check payable to cash which was cashed by MBM comptroller Andrew Serell.¹³³

MBM officials testified at the DiCarlo-MacKenzie trial in 1977 that \$10,000 in cash was given to MacKenzie (to share with DiCarlo) on February 18, 1972.¹³⁴ No mention was made at the DiCarlo-MacKenzie trial of the other \$11,500 even though the FBI was aware of it and had been told in 1974 that it had gone to Boston for DiCarlo and MacKenzie.¹³⁵

¹²⁶ Transcript of MBM Accountant's Workpaper for fiscal year ended 4/30/71.

¹²⁷ Heyman testimony, 25 M/M 3/26/79 at 57.

¹²⁸ Id. at 59.

¹²⁹ Id. at 67-70.

¹³⁰ Written statement dated June 12, 1980 executed by Jack S. Thomas in London, England, at 1-2.

¹³¹ Mansueto testimony, 2 M/M 2/13/79 at 72.

¹³² Shields testimony, Sp. Comm. 6/2/80 at 67-70.

¹³³ McKee testimony, 5 DiC 1/31/77 at 53-54.

¹³⁴ Id. at 52-56. See discussion in Chapter VII, infra.

¹³⁵ FBI Airtel dated February 7, 1975 from Special Agent in Charge (SAC) of the Philadelphia office to the SAC of the New York office, re: NY FBI file no. 166-3647. See discussion in Chapter VIII, infra.

In testimony before the Commission in 1980 MacKenzie admitted receiving cash from MBM in February 1972 but said the amount was only \$8,000 of which \$4,000 went to DiCarlo.¹³⁶ Testimony by MBM officials William F. Harding and Daniel J. Shields tended to corroborate MacKenzie.¹³⁷ Shields also testified that he kept \$2,500 of the cash that was generated in February 1972 since it was due to him, and that another \$1,000 went to a BBC official.¹³⁸ These amounts (\$8,000 + \$2,500 + \$1,000) total \$11,500 -- the amount generated by checks to Shields.

As for the other \$10,000, the Commission heard testimony that it went to Albert Manzi. William Masiello testified that he was given the money in cash by MBM and that he delivered it to Manzi at Manzi's home in Paxton.¹³⁹ Masiello said the transaction occurred in February 1972, the month that Masiello's brother reacquired Masiello & Associates from another firm.¹⁴⁰

That the \$10,000 cashed by Andrew Serell was for Manzi may be supported by entries in Anthony Mansueto's calendars. On January 31, 1972 Mansueto's calendar says: "URGENT Andy S (10M - 10 days) then call Bill M. ..." ¹⁴¹ And on February 2, 1972 Mansueto's calendar says: "Bill Masiello - re Toots sore. OK - but won't do anything if & until he gets 10M." ¹⁴² Mansueto admitted, in testimony at the Manzi-Masiello trial, that the January 31 and February 2, 1972 entries in his calendars reflected conversations about a Manzi demand for another \$10,000 in cash from MBM.¹⁴³ Mansueto testified, however, that he succeeded in putting Manzi off for another three months.

¹³⁶ MacKenzie testimony, Sp. Comm. 5/28/80 at 42-45.

¹³⁷ Shields testimony, Sp. Comm. 6/2/80 at 67-70; Harding testimony, Sp. Comm. 6/4/80 at 47.

¹³⁸ Shields testimony, Sp. Comm. 6/2/80 at 69-70.

¹³⁹ William Masiello testimony, Sp. Comm. 6/24/80 at 49-50.

¹⁴⁰ Id.

¹⁴¹ Mansueto desk calendar, 1/31/72.

¹⁴² Mansueto pocket calendar, 2/2/72.

¹⁴³ Mansueto testimony, 2 M/M 2/13/79 at 95-98, 139.

The May 18, 1972 Parker House Meeting
and MBM's May 23, 1972 Payment
to William V. Masiello for Manzi

During May of 1972, MBM generated another \$20,000 in cash.¹⁴⁴ MBM witnesses testified that \$10,000 of that money went to Ronald MacKenzie, to be shared with Joseph DiCarlo.¹⁴⁵ MacKenzie admitted to the Commission that he received this \$10,000 and gave \$5,000 of it to DiCarlo, and DiCarlo admitted receiving \$5,000 in May 1972 from MBM via MacKenzie.¹⁴⁶ Thus, there is no dispute about this payment.

As for the other \$10,000 in cash that MBM generated in May of 1972, the MBM witnesses testified that the money was intended for Albert Manzi and was given to William V. Masiello to deliver to Manzi.¹⁴⁷ Masiello agreed, testifying that he received the \$10,000 in cash from MBM in Boston and passed it in turn to Manzi in a parking lot in Marlborough.¹⁴⁸

As to why MBM was giving this additional \$10,000 to Manzi, there is some disagreement. To set the context, it should be noted that on May 4, 1972, MBM reactivated a formal proposal to provide project management for Phase II of the UMass/Boston project.¹⁴⁹ Since the contract that MBM had obtained in December 1969 covered only Phase I of the UMass/Boston project,¹⁵⁰ MBM was now applying for Phase II. MBM's Phase II proposal sought a fixed fee of approximately \$2 million, as well as certain other payments on a "reimbursable" basis.¹⁵¹

¹⁴⁴ MBM check #3549 dated 5/12/72 for \$10,000 payable to cash; MBM-Boston check #3130 dated 5/23/72 for \$5,000 payable to cash; EDI check #171 dated 5/23/72 for \$5,000 payable to cash.

¹⁴⁵ McKee testimony, 5 Dic 1/31/77 at 56-63; Thomas testimony, 11 DiC 2/8/77 at 68-83.

¹⁴⁶ MacKenzie testimony, Sp. Comm. 5/28/80 at 48-50; DiCarlo testimony, Sp. Comm. 6/3/80 at 116.

¹⁴⁷ McKee testimony 12 M/M 3/1/79 at 72; 13 M/M 3/2/79 at 66-72; Sp. Comm. 6/26/80 at 82-83; Thomas testimony, 10 M/M 2/26/79 at 77-81.

¹⁴⁸ William Masiello testimony, Sp. Comm. 6/24/80 at 62-64.

¹⁴⁹ Draft Consultant Contract for Project Management Services, Massachusetts State Project No. U67-4 Phase II, between the Bureau of Building Construction and MBM; certification dated May 4, 1972 by Seymour Berger authorizing Jack S. Thomas to tender proposals and execute contracts on behalf of MBM. See also Draft Memorandum of Approval #72-84 dated May 4, 1972 from Walter J. Poittrast to Alan Altshuler (Secretary of Transportation and Construction) and Robert L. Yasi (Secretary of Administration and Finance) concerning continued services of project management consultant for Phase II and extended services of MBM as project manager for Phase I. See also letter dated December 29, 1971 from Gerald McKee, Jr. to Walter J. Poittrast.

¹⁵⁰ See discussion in Chapter IV supra.

¹⁵¹ Draft Consultant Contract for Phase II of UMass/Boston, at 12.

MBM had reason to believe that the BBC would support MBM's proposal, since BBC Director Poitras's administrative assistant, Frederick Kussman, had helped MBM draft the proposal.¹⁵² MBM also had reason to believe that A&F would be favorably disposed toward the proposal, since Deputy A&F Commission Albert Zabriskie had already expressed his support to MBM for Phase II.¹⁵³ The only obvious problems for MBM concerning Phase II were that (1) there was a chance that outside project management would not be used for Phase II, and (2) there was a chance that the University's plans for Phase II would be scrapped altogether, with the UMass/Boston campus not going beyond the buildings constructed under Phase I.¹⁵⁴ MBM was aware of these problems and, accordingly, incorporated in its proposed contract a provision that MBM would be paid \$1,050,000 even if Phase II did not go forward.¹⁵⁵ In addition to trying to see to it that Phase II would proceed and that MBM would receive a Phase II contract, MBM also in May 1972 was seeking an extension of its Phase I contract worth several hundred thousand dollars.¹⁵⁶

On May 5, 1972, MBM Vice President Mansueto's pocket calendar contained a note reminding Mansueto to set up a meeting for May 11, 1972 in Boston for McKee, Mansueto, Manzi, and William Masiello.¹⁵⁷ Mansueto has testified that he called William Masiello on May 8, 1972 to set up the meeting.¹⁵⁸ The meeting was scheduled, but it then had to be postponed for a week, because Mansueto's wife took ill on May 11, 1972.¹⁵⁹

152

Notes of January 31, 1977 interview of Frederick J. Kussman [by DiCarlo Defense Team attorney William R. DiMento], at 1. See also manuscript draft consultant Contract for Project Management Services, Mass. State Project No. U67-4 Phase II, part of which is in Frederick J. Kussman's handwriting.

153

See "confidential" memorandum dated January 28, 1972 from C. Ronald Rabin to Gerald McKee and Jack Thomas, concerning a telephone conversation with Albert H. Zabriskie on January 27, 1972.

154

Indeed, that is what eventually happened.

155

Draft Consultant Contract for Phase II of UMass/Boston, at 12.

156

Draft Consultant Contract for Project Management Services, Massachusetts State Project No. U67-4 Phase I between the BBC and MBM, effective date to be June 1, 1972 for extension of services through November 1, 1973. See also draft 5/4/72 Memorandum of Approval #72-84, at 1.

157

Mansueto pocket calendar, 5/5/72.

158

Mansueto testimony, 2 M/M 2/13/79 at 163.

159

Id. at 165-169; 7 M/M 2/20/79 at 107; Mansueto pocket calendar, 5/11/72, and his desk calendar, 5/11/72.

On May 18, 1972 McKee and Mansueto flew to Boston.¹⁶⁰ They went to the Parker House, where they met with William Masiello and with Albert Manzi.¹⁶¹ There is no dispute among McKee, Mansueto, and Masiello about many aspects of what transpired that day at the Parker House. They agree that a meeting took place involving McKee, Mansueto, Masiello, and Manzi.¹⁶² They agree that Manzi complained that MBM was not meeting its "commitments"¹⁶³ and that MBM would be severely damaged in Massachusetts -- even run off the UMass/Boston Phase I job prematurely -- unless MBM came up with thousands of dollars in cash, fast.¹⁶⁴ They agree that five days after this Parker House meeting, MBM gave \$10,000 in cash to Masiello to deliver to Manzi.¹⁶⁵

Masiello supplied some additional detail about the Parker House meeting of May 18, 1972. He said that Manzi, to make his point about MBM being behind in its "commitments" took out an adding machine tape which showed that MBM had already received \$3.5 million on the UMass/Boston contract.¹⁶⁶ Masiello said he thought that Manzi had gotten the tape from the State Comptroller's office.¹⁶⁷ That was supported by testimony from M. Joseph Stacey and Albina Giardiello -- respectively the State Comptroller in 1972 and one of his employees -- who testified that an adding machine tape was prepared for Manzi in 1972 showing MBM's receipts under the UMass/Boston contract.¹⁶⁸ Stacey added that Manzi never sought such information about any other firm or contract.¹⁶⁹ MBM President

¹⁶⁰ Mansueto testimony, 2 M/M 2/13/79 at 173.

¹⁶¹ McKee testimony, Sp. Comm. 6/26/80 at 72; Mansueto testimony, 2 M/M 2/13/79 at 184.

¹⁶² McKee testimony, 12 M/M 3/1/79 at 60-62; Mansueto testimony, 2 M/M 2/13/79 at 181, 183; William Masiello testimony, Sp. Comm. 6/24/80 at 54.

¹⁶³ McKee testimony, 12 M/M 3/1/79 at 63-64; Sp. Comm. 6/26/80 at 73-74; Mansueto testimony 2 M/M 2/13/79 at 191-192; William Masiello testimony, Sp. Comm. 6/24/80 at 56-57.

¹⁶⁴ McKee testimony, 12 M/M 3/1/79 at 64; Sp. Comm. 6/26/80 at 73-74; Mansueto testimony, 2 M/M 2/13/79 at 192-194.

¹⁶⁵ McKee testimony, 13 M/M 3/2/79 at 66-72; Sp. Comm. 6/26/80 at 82-83; William Masiello testimony, Sp. Comm. 6/24/80 at 62-63; Thomas testimony, 9 M/M 2/23/79 at 76-94.

¹⁶⁶ William Masiello testimony, Sp. Comm. 6/24/80 at 55.

¹⁶⁷ Id. at 47, 55.

¹⁶⁸ Testimony of M. Joseph Stacey, Sp. Comm. 6/25/80 at 12-14; testimony of Albina Giardiello, Sp. Comm. 6/25/80 at 14-17.

¹⁶⁹ Stacey testimony, Sp. Comm. 6/25/80 at 15.

McKee, in testimony before the Commission, agreed that Manzi may have shown such an adding machine tape at the Parker House Meeting.¹⁷⁰

Masiello added that Manzi also took out a second sheet of paper which listed the payments that MBM had made to Manzi up to that point.¹⁷¹ Masiello said that Manzi compared the MBM fee receipts with the MBM "contributions" and pointed out that MBM was far short of its commitment.¹⁷² McKee denied this in testimony before the Commission.¹⁷³

Masiello also testified that there was no question but that Manzi was seeking the money for the Sargent campaign¹⁷⁴ and that Manzi wanted the money soon because he was holding a fundraising party in Worcester for Sargent on May 21, 1972.¹⁷⁵ Manzi apparently falsely reported illegal corporate money as ticket sales from private individuals on other occasions.¹⁷⁶

McKee, Mansueto, and Masiello all agree that the Parker House meeting with Manzi was brief. According to Masiello, Manzi left first, and McKee and Mansueto then discussed a related matter with Masiello.¹⁷⁷ Masiello has testified that McKee said that he was confident that MEM would receive the UMass/Boston Phase II contract if there were to be such a contract, but that he was concerned that Phase II, or project management in

¹⁷⁰ McKee testimony, Sp. Comm. 6/24/80 at 74.

¹⁷¹ William Masiello testimony, Sp. Comm. 6/24/80 at 55-56.

¹⁷² Id.

¹⁷³ McKee testimony, Sp. Comm. 6/26/80 at 74.

¹⁷⁴ William Masiello testimony, Sp. Comm. 6/24/80 at 56, 61.

¹⁷⁵ Id. at 56.

¹⁷⁶ See Stacey testimony, Sp. Comm. 5/5/80 at 6-17; DMJM investigation portion of this report.

¹⁷⁷ William Masiello testimony, Sp. Comm. 6/24/80 at 57-60.

Phase II, might never come to pass.¹⁷⁸ Therefore, according to Masiello, McKee asked Masiello to speak to Masiello's friend, State Senate Ways & Means Committee Chairman James A. Kelly, Jr., about mandating by law that outside project management be used for Phase II of UMass/Boston.¹⁷⁹ Masiello further testified that he replied to McKee that he (Masiello) was not willing to help MBM out, even though McKee offered to give Masiello a six-figure amount (i.e., \$100,000 or more) for his efforts.¹⁸⁰

In the foregoing discussion, no mention has been made of Albert Manzi's testimony. Manzi testified in 1979 in Massachusetts Superior Court while on trial as a defendant to a criminal indictment in this matter.¹⁸¹ He was acquitted. When asked to testify to the same matters before the Commission in 1980, Manzi refused, citing his privilege against self-incrimination.¹⁸² Since Manzi was apparently protected by the Constitution's double jeopardy clause from a new state prosecution for the same alleged offense and since the federal statute of limitations had presumably run, it is unclear what Manzi's basis was for asserting the privilege against self-incrimination. The Commission observes that some witnesses assert the privilege against self-incrimination when they are concerned that truthful answers would be admissions of prior perjury. Accordingly, it seems unproductive to review Manzi's prior testimony at length. In brief, Manzi testified that he did meet McKee and Mansueto at the Parker House in May 1972, but that no one else -- including Masiello -- was present.¹⁸³ Further, Manzi said that there was no discussion of political contributions or other payments by MBM, because Manzi did not believe in bringing up the subject to people such as McKee and Mansueto whom Manzi did not believe would be giving "with an open heart."¹⁸⁴ Finally, Manzi denied receiving \$10,000 cash at any time from MBM.¹⁸⁵ As discussed in Chapter IX, some of Manzi's trial testimony tracked testimony by Masiello at the same trial -- testimony that Masiello has now admitted was perjurious.¹⁸⁶

¹⁷⁸ Masiello testimony, 23 M/M 3/22/79 at 82-84.

¹⁷⁹ Id. at 84; Sp. Comm. 6/24/80 at 58-59.

¹⁸⁰ William Masiello testimony, Sp. Comm. 6/24/80 at 59-60; 23 M/M 3/22/79 at 84-85.

¹⁸¹ Commonwealth v. Masiello, Manzi, Cr. Nos. 019122-7, 018334 (Suffolk Cty. 1979) Manzi testimony 18 M/M 3/14/79, 19 M/M 3/15/79.

¹⁸² Manzi testimony, Sp. Comm. 6/9/80 at 6, 8.

¹⁸³ Testimony of Albert P. Manzi, 18 M/M 3/14/79 at 52-57.

¹⁸⁴ Manzi testimony, 19 M/M 3/15/79 at 32.

¹⁸⁵ Manzi testimony, 18 M/M 3/14/79 at 77-78.

¹⁸⁶ William Masiello testimony, Sp. Comm. 5/12/80 at 67-69; Sp. Comm. 6/24/80 at 52-58.

McKee and Mansueto attempted at the Manzi-Masiello trial to portray the May 18, 1972 meeting as an extortion. Judge Joseph R. Nolan, who heard the case without a jury, found Manzi and Masiello not guilty of an extortion (or of campaign law violations). For a further discussion of the trial, see Chapter IX, below.

Before concluding this section, it should be noted that MBM generated additional cash during months in which Anthony Mansueto has testified that Manzi was making dunning phone calls to him.¹⁸⁷ The cash generated includes \$5,000 in October 1971, another \$5,000 in November 1971, and still another \$5,000 in January 1972 which MBM officials have testified went to Ronald MacKenzie (to share with Joseph DiCarlo), but which MacKenzie denies having received. For a discussion of those payments, see Chapter VII, below.

Conclusion

There is substantial evidence consistent with the allegation that MBM obtained the UMass/Boston contract as a result of a prior corrupt agreement to make illegal cash payment through Albert Manzi in return for the contract. Additional evidence of attempts by MBM to use political clout and/or corrupt means to obtain contracts and to attain other ends is set forth in Appendices B, C, D, E, and F.

Of the people most likely to have direct knowledge of such a corrupt agreement, Albert Manzi refused to testify before the Commission, asserting his privilege against self-incrimination. Donald Dwight (who awarded the contract) refused to appear and testify fully before the Commission. At a preliminary private hearing, Dwight -- an out-of-state witness -- asked the Commission to forbear from placing him under summons. The Commission credited Dwight's promise that he would return for full, public testimony and honored Dwight's request that he be extended the courtesy, as a former Lieutenant Governor, of being permitted to appear and testify without having been summoned. Anthony Mansueto also refused to appear and testify.

Without testimony from at least one of these individuals that MBM obtained the UMass/Boston contract in return for a prior commitment to make illegal cash payments through Manzi, the Commission does not feel it appropriate to make a formal finding of fact that MBM bought the UMass/Boston contract.

¹⁸⁷ Mansueto testimony 2 M/M 2/13/79 at 71-78, 119.

There is, however, abundant evidence from MBM witnesses and documents, as well as from other sources discussed above, that MBM attempted to win contracts in Massachusetts by political means and that MBM engaged in a pattern of making voluntary illegal cash payments to politicians and fundraisers who MBM believed could influence contract awards and legislation in MBM's favor.

CHAPTER VI

THE TERMS OF MBM'S UMASS/BOSTON CONTRACT,
MBM'S ANTICIPATED PROFIT,
AND MBM'S PERFORMANCE ON THE CONTRACT

Terms of the Contract

Although MBM was awarded the UMass/Boston construction management job on December 22, 1969, the terms of the contract were yet to be determined. The BBC had never entered into such a contract before and therefore left it to MBM to make a proposal as the basis for the negotiations.¹

On January 8, 1970, MBM Boston Regional Manager Jack Thomas wrote a memo advising the other MBM officials that a delay in making a proposal would produce a concomitant delay in the signing of the contract which in turn would cause a delay in MBM's reimbursement for such out-of-pocket expenses as the rental of office space and the purchase of office equipment.² MBM was experiencing substantial cash flow problems at the time,³ so MBM submitted its first proposal on February 4, 1970.⁴

MBM's first proposal called for MBM to receive two types of fees: (1) a "fixed" fee of \$1,455,000 covering certain personnel and services that MBM would provide; and (2) a "reimbursable" fee to compensate MBM on a cost-plus-specified-percentage-markup basis for other personnel and services. There was no limit on the amount MBM could receive under the reimbursable section. The MBM proposal also stated that if the UMass/Boston Phase I project was not completed by September 30, 1972, MBM's fee would be subject to adjustment (i.e., enlargement).

An MBM internal memorandum⁵ summarizes discussions that MBM then had with Frederick Kussman (who was administrative assistant to BBC Director Walter Poitras). According to the memorandum --

1 P.A. Report at 34.

2 Memorandum dated January 8, 1970 from J[ack] S. T[homas] to G[erald] McKee, Jr., A[nthony] E. M[ansueto], M[itchell] Gordon, C. R[onald] Rabin, and M[artin] H. Heyman, "Subject: 459-004, University of Massachusetts, Boston."

3 Testimony of Gerald McKee, Jr., Sp. Comm. 6/26/80 at 85; see letter dated February 26, 1970 from Jeremiah D. Lambert to Gerald McKee, Jr., concerning fees owed to the Peabody firm by MBM.

4 Proposal submitted by MBM to the BBC on February 4, 1970 in regard to the UMass/Boston project.

5 Undated, unsigned memorandum entitled "Important Points from Meeting with Kussman," found in MBM's files.

"[Kussman] said because of internal problems, we cannot have design review in reimbursables. We therefore agreed to put the 5-man design review group in the [fixed] fee.... We [also] agreed to change the scope paragraph to say [that the UMass/Boston Phase I project would be] 'substantially completed by the end of 1972.' [Kussman] said this gives him the protection he wants."

Based upon such conversations with the BBC,⁶ MBM submitted a revised proposal which shifted design review services to the fixed fee portion of the contract, extended MBM's services through December 31, 1972, and correspondingly increased MBM's fixed fee to \$1,725,000.⁷ Unlike the original proposal, the second proposal did not state the fixed fee in dollar terms. Instead, it said that MBM would receive a fixed fee equal to 1.15 percent of the total UMass/Boston Phase I project cost and that the total project cost would be estimated for this purpose as being \$150 million. (Multiplication reveals that 1.15 percent of \$150 million equals \$1,725,000 -- MBM's proposed fixed fee.) As to why the amount of the fixed fee was stated in this fashion, the MBM internal memorandum says that

"[Kussman] commented that the public liked percentages more than lump sums."

The BBC did not accept this second proposed contract from MBM.⁸ A major reason why the second proposal was rejected (according to a contemporaneous memorandum from Endicott Peabody, summarizing a conversation that Peabody had with Jack Thomas) was that the second proposal still included in the reimbursables section certain salaries for MBM employees that were embarrassingly high in the BBC's view.⁹ By shifting those salaries into the lump sum fixed fee section -- where the salaries would not become a matter of public record -- the embarrassment could be avoided. Accordingly, MBM's third proposal made that change, increasing MBM's proposed fixed fee to 1.6 percent of estimated construction cost -- an amount equal to \$2.4 million.¹⁰

The MBM third proposal was submitted on March 19, 1970. Although quick

⁶ Poittrast testimony, cited in P.A. Report at 37-38.

⁷ Proposal submitted by MBM to the BBC sometime between February 4 and March 19, 1970 in regard to the UMass/Boston project. See memorandum dated March 3, 1970 from Jack S. Thomas to Gerald McKee, Jr. concerning changes in the proposed MBM UMass/Boston contract.

⁸ Memorandum dated April 15, 1970 from Gov. [Endicott] Peabody to Mr. [Jeremiah D.] Lambert, re: "MBM."

⁹ Id.

¹⁰ Proposal submitted by MBM to the BBC on March 19, 1970 in regard to the UMass/Boston project.

approval was expected,¹¹ the proposal had not been accepted by April 15, 1970, when Endicott Peabody wrote the following memorandum:¹²

"I was in Boston on Tuesday, April 14. I called [Deputy A&F] Commissioner Zabriskie to find out whether the MBM contract had been signed. I was surprised to hear him say that the contract called for an awful lot of money. He felt the contract would be all right if MBM lowered its fee. I asked him if I could see the contract. He said that Walter Poitrast, Director of the Bureau of Building Construction had it. I then called Jack Thomas at MBM in Boston. He was surprised that the contract had been bucked back to Poitrast. He understood it was on the Commissioner's desk for signature. I chastised him for not keeping us informed as to the progress of the contract, and asked him if he wanted our help at the present time. He said yes. I called Poitrast who was somewhat embarrassed. He said the fee was a little high -- at 1.6% of the total cost. He thought it would get through more quickly if it was shaved to 1.5%.

"Briefly, the contract is in two parts: (a) reimbursables, and (b) fee. In other words a cost plus fixed percentage. The construction cost for the University of Massachusetts building will be \$150 million. On this basis a 1.6% will total \$2.4 million. If MBM shaves it .1% they will have to reduce their fee \$150,000 which is a lot of money.

"Subsequently, I learned from Thomas that the initial proposal was for a fee at 1.16%. However, certain persons were listed on the reimbursables side of the contract which made it embarrassing to Poitrast to have their salaries publicly known. They were then transferred to the fee side and the fee increased from 1.16% to 1.6%. However, in addition to the actual cost of the salaries there was a 40% add on which would not have been the case had it been charged to reimbursables. As a result, MBM actually stood to gain an additional \$75,000 by transferring these men from the cost reimbursables to the fee side. So MBM could shave their fee to 1.55% and be no worse off."

Peabody then attempted to work out a compromise on the fixed fee, and agreement was reached on April 17, 1970 that the fixed fee would be 1.53 percent (equalling \$2,295,000).¹³ Peabody wrote a memorandum¹⁴ explaining how this came about:

"[T]he Commonwealth took the position that MBM should charge no more than 1.5%. After conversing with Zabriskie and Poitrast, I proposed 1.53%. This saved [MBM] at least \$45,000. The net result was that the MBM fee was no more than \$10,000 off their initial proposal. This was because on Schedule B they had a 20% add on, whereas on Schedule A they had a 40% add on. Certain fees were taken from Schedule B and added to Schedule A with a consequent increase in fee of 20%. Since this was only a bookkeeping change, and there was no increase in costs, there was no loss in making this addition to Sch. A only 20% as opposed to 40%. McKee himself agreed that MBM was 'netting out at 1.53% at the same figure that they had originally proposed.'"

¹¹ Memorandum dated April 2, 1970, from Gov. [Endicott] Peabody to Mr. [Jeremiah D.] Lambert, concerning MBM contract negotiations.

¹² Memorandum dated April 15, 1970 from Gov. [Endicott] Peabody to Mr. [Jeremiah D.] Lambert, re: "MBM".

¹³ Memorandum dated April 17, 1970, from Jack S. Thomas to Walter [J.] Poitrast.

¹⁴ Peabody 4/15/70 memorandum to Lambert.

The documents discussed above, about MBM's proposals, were not available to the Post Audit Subcommittee, whose final report expressed puzzlement at why the BBC would have rejected MBM's initial proposals -- which embodied lower fixed fees -- and accepted the final proposal at the higher fixed fee.¹⁵ As just discussed, the answer, briefly, is that MBM's total fee did not change much from one proposal to the next, and the fixed fee increased mainly because certain items were being removed from the reimbursable portion of the contract and placed in the fixed fee section for the reasons mentioned above.¹⁶

The agreement of 1.53 percent between Peabody, Zabriskie, and Poitrast still had to be ratified by A&F Commissioner Donald Dwight. Dwight apparently had expressed concern about the size of the fee to Poitrast and directed Poitrast to speak with Leo Demarsh of the Department of Public Works¹⁷ (of which Dwight had been a commissioner until 1969). Poitrast had sent a memorandum to Dwight on April 14, 1970¹⁸ (when MBM was still seeking a 1.6 percent fixed fee) reporting that

"Leo told me that the only services that Public Works is using is in the review area, that they have not as yet any in the supervision area. The cost for the review services on a per diem basis is running about 20% of the design fee.

"If we relate this percentage to our design fees, we would be paying better than 1.2% for just review. MBM is then only charging .4% above this for full administrative services plus supervision after construction has started. It appears, based on Public Works costs, that this contract is well within a reasonable percentage for the service."

Poitrast did not mention in the memorandum that MBM's 1.6 percent (later reduced to 1.53 percent) fee was only part of the total fee that MBM was seeking. MBM was, of course, seeking a cost-plus-percentage-markup reimbursables fee, which was included in all of MBM's proposals, included in the final contract, and which generated more than \$1,000,000 in revenues to MBM above and beyond the fixed fee.¹⁹

15 P.A. Report at 34-47.

16 Hartley J. Chazen, an attorney who had been with the Monasch & Chazen law firm in 1970 when that firm helped MBM draft its proposals, told Commission staff in an interview, and wrote a letter to the Commission repeating, that he recalled MBM having substantially reduced its fee requests as a result of hard bargaining by the BBC. See letter dated August 28, 1979 from Hartley J. Chazen to Commission staff. The documents discussed above do not corroborate Mr. Chazen's memory. Several of those documents were not available to the Commission at the time, being supplied later by the Peabody law firm.

17 Memorandum dated April 14, 1970 from W[alter] J. Poitrast to D[onald] R. Dwight, re: "Mass. State Project U67-4 -- University of Massachusetts -- Columbia Point Management Fees."

18 Id.

19 Comptroller's cards.

Nor did Poittrast mention the reimbursables fee in an April 21, 1970 memorandum recommending to Dwight that MBM's final proposal be accepted.²⁰ Moreover, Poittrast's memoranda failed to make plain that MBM's 1.53 percent fixed fee would not be reduced even if the actual project cost turned out to be less than the estimated project cost of \$150 million. For that matter, Poittrast's memoranda did not point out that the \$150 million project cost, upon which MBM's 1.53 percent fee was to be calculated, included costs of acquiring the site and other expenses as to which MBM had no supervisory or other role to play.²¹ It should be noted in this regard that in 1978 the Governor's counsel, Max Volterra, recommended that because the UMass/Boston Phase I project had been scaled down to substantially less than \$150 million, MBM should either be called upon to renegotiate its fee or be subjected to suit by the Commonwealth. The Commission is not aware that either alternative was pursued, but such action would have been largely meaningless since MBM's financial position apparently would have made it impossible for the Commonwealth to demand or recover any monies from MBM.²²

Dwight approved MBM's contract on April 22, 1970.²³

MBM's Anticipated Profit

In the course of its investigation, the Commission found an internal MBM document, written around April of 1970, analyzing MBM's projected profit from the fixed fee portion of the UMass/Boston contract.²⁴ It would seem to have been unnecessary for MBM to analyze whether MBM would make a profit on the reimbursables portion of the contract, since the reimbursables section called for MBM to recoup its costs and to receive a percentage mark-up on top of those costs. Thus, it is not surprising that the MBM profit analysis concerned itself only with MBM's \$2,295,000 fixed fee.

As to the \$2,295,000 fixed fee, the analysis showed all the costs that MBM expected to incur in relation to the fixed fee. After subtracting those costs, the analysis arrived at a "Gross Profit" figure of \$1,280,948 -- which is approximately a 56 percent profit. The "Gross Profit" would have been even

20 Memorandum of Approval #70-80 dated April 21, 1970 from Walter J. Poittrast to Donald R. Dwight, regarding the "Rate of Compensation" for "Mass. State Project U67-4 #2A - University of Mass. Columbia Point - Boston."

21 See P.A. Report at 43-45.

22 See discussion of MBM's financial situation in Chapter II supra.

23 Approval of Donald R. Dwight dated April 22, 1970 of Memorandum of Approval #70-80.

24 Document headed, "UMass Boston Campus 459-004, Summary of Budget," found in MBM files. Undated but probably prepared after the contract was signed on April 22, 1970.

higher if MBM had not treated as expenses such items as "Public Relations" (\$90,000), "Legal Fees" (\$40,000), and "Financing" (\$25,000). MBM also treated as an expense the "Value of On-Line Systems & Procedures" which would be used on the project, presumably at no additional cost to MBM (\$190,370).

In testimony at the Manzi-Masiello trial in 1979, MBM President Gerald McKee, Jr. said that MBM's profit on the UMass/Boston contract was only \$200,000-\$250,000.²⁵ In 1980, when McKee appeared before the Commission, he was shown the document just discussed, and McKee said that the "Gross Profit" figure really was only a probable cash flow to MBM from the project, not reflecting associated overhead costs that should properly have been deducted to get MBM's net profit on the project.²⁶ It should be noted, however, that the document included \$94,675 as costs of services that other MBM offices would provide to the UMass/Boston project. It is true, though, that the document made no allowance for sales expenses. Such expenses, and perhaps certain other ones, could reasonably be used to reduce "Gross Profit" to "Net Profit." Nonetheless, for a service company, those expenses might be expected to be somewhat limited. Moreover, MBM's projected fixed-fee gross profit of \$1,280,948 did not include whatever profit MBM may have made on the reimbursable portion of the April 22, 1970 contract, and did not include whatever profit MBM may have made on the \$803,142 extension contract of December 27, 1972, the \$57,636 extension contract of 1973, and the \$47,862 "delay claim" contract of 1972.

MBM's Performance

MBM officials have maintained that MBM brought the UMass/Boston project to completion on time, within budget, and without major defects.²⁷ While the project clearly was more successful in these respects than many other projects studied by the Commission,²⁸ MBM's performance was criticized by UMass officials during the course of the project, as discussed below. A balanced assessment would seem to be that MBM did provide valuable services on the project, but that MBM's performance was not flawless and could have been provided at a lower fee.

²⁵ McKee testimony, M/M 3/1/79 at 28-29.

²⁶ McKee testimony, Sp. Comm. 6/26/80 at 38-40.

²⁷ McKee testimony, Sp. Comm. 6/26/80 at 3-6.

²⁸ See, e.g., statistics and discussion elsewhere in this Final Report.

The major reason why an outside firm such as MBM was used on the UMass/Boston project was that the BBC simply lacked the staffing to expedite the project.²⁹ Since the state could have hired employees directly rather than using MBM, MBM's larger fee would not seem to be justified unless MBM provided some sort of expertise unavailable to the BBC. While MBM officials maintain that they did so, UMass was less impressed at the time. For example, in a January 15, 1971 memorandum,³⁰ UMass Planning Director Francis E. O'Brien, Jr. wrote to James J. Cusack, the BBC's UMass/Boston project engineer:

"That the format of [MBM's] schedule is a computer output has no value whatsoever. We are looking for results -- how much time is the firm saving -- and I, as one, see none. On this basis, how do we justify the three to four million dollars the management service is costing the Commonwealth?"

O'Brien and his assistant Willard Prince did make a "strong recommendation that project management be continued" from Phase I to Phase II of the UMass/Boston project, according to the minutes of the Designer Selection Board meeting of February 17, 1972.³¹ But this recommendation was apparently made more because O'Brien wanted to insure that the Phase II management would not be left to the short-staffed BBC than because he was impressed with MBM. For example, on April 3, 1972 O'Brien wrote a memorandum to Deputy A&F Commissioner Zabriskie³² that included the following:

"The Commonwealth is now considering the desirability of using project management for Phase II....

"I would say that project management as project management via 03 [the employment of a consultant] is not necessary on Phase II, since it has proved of little value in Phase I in building program, budget or schedule; but the state does need more skilled people on the job than it is accustomed to put on a job, and these people might well be hired under 03....

"If Phase I at Columbia Point were a one-shot, short term operation, consultants [such as MBM] make sense. As a long term operation, stretching over ten years, it does not. Consultants charge two to two and a half times what the state would pay people on 01 [permanent employees] or 02 [temporary employees]....

"We do know that the consultant's schedule did not work. February of 1971, the management consultant, without discussion with the University, in advertisements for construction of the buildings, promulgated a new schedule which added, not the four months attributable to the methane study, but nearly a year. Updated schedules indicate that even that schedule will not be met....

²⁹ See discussion in Chapter IV supra.

³⁰ Memorandum dated January 15, 1971 from "Frank" [Francis E.] O'Brien [Jr.] to James [J.] Cusack, re: "Columbia Point/Schedule of Completion Dates," at 2.

³¹ Minutes of the 88th Regular Meeting of the Designer Selection Board, February 17, 1972, at 1.

³² Memorandum dated April 3, 1972 from F[rancis E.] O'Brien to A[lbert H.] Zabriskie, re: "Phase IIa design and construction staffing and organization."

"The construction, if it takes as long as now projected, will fall right on the average for non-residential/non-commercial structures of the same size order....The state is paying the management consultants for high order skills and getting average performance....

"Nevertheless, the management consultants did do things that are worth something to the state. Just the added personnel made review of the enormous volume of documents manageable....The bid documents -- as shown by the low spread of bids when multiple bids were received -- were of high quality....In these matters and many others the staff hired through O3 was worth what the state paid....

"To summarize, and at the same time to clear up the earlier contradiction, I would suggest that the state hire people, not management consultants. Hire skilled man-hours, not computers and overhead. Hire the people, put them in the charge of someone in the state -- the BBC or the University -- and get the job done at, let's say, one-third of what the Phase I management consultants have charged....

"The Commonwealth could get damned good value, for far less money, by hiring what it really needs -- skilled people -- and not hiring 'project management,' something it does not need, or at least has not needed on Phase I at Columbia Point."

Others at the university also found fault with aspects of MBM's performance. William Meehan and Willard Prince, two university staff members who worked at the project office during Phase I, composed a memorandum³³ in which they noted the following:

"BBC and MBM were responsible for approval of the scope of work to be performed or modified, and for the resulting charges or credits.... In numerous cases, the University's staff raised objections to materials, methods, and costs involved in change orders, and in the acceptance of various designs and equipment to be installed in the project. In most cases the University's recommendations were followed, but in some cases they were disregarded: some serious deficiencies in the final design may be attributed to this disregard."

Some design-related problems with which the University was especially concerned were the ventilation, heating, and cooling problems in the College I building and the failure of the saltwater cooling system.³⁴

Moreover, it cannot be said without qualification that the UMass/Boston Phase I project was built on time or within budget. The project was supposed to be substantially completed with opening set for late 1972,³⁵ but the campus was not fully ready for occupancy until January 1974.³⁶ Part of the delay may have resulted from methane studies ordered by the Legislature,³⁷ but O'Brien did not

33 Quoted in 2/24/78 UMass memorandum at 3-4.

34 Id. at 4.

35 MBM-BBC Contract no. 601, at 17.

36 2/24/78 UMass memorandum, at 4.

37 Acts of 1970, c.633. See also discussion of MBM's delay claim in Appendix E.

believe that the full delay could be attributed to the methane studies.³⁸ Moreover, UMass officials seem to feel that the time savings on the project were due more to O'Brien's work than to MBM's.³⁹ As to the budget, the Legislature was unwilling to appropriate the full \$150 million sought by the University.⁴⁰ After appropriating \$130 million, the Legislature had to be asked to add another \$5 million due to overruns.⁴¹ Moreover, the original budget had contemplated a new MBTA subway stop but that stop was never built.

When interviewed by Commission staff in 1979 and 1980, UMass/Boston officials generally expressed satisfaction with the way the project was built and the way MBM performed as part of the process.⁴² The question remains whether O'Brien was correct in believing in 1971 and 1972 that MBM's participation provided needed staffing but that the same results could have been obtained at far lower cost to the Commonwealth.

38 O'Brien 4/3/72 memorandum to Zabriskie, supra n.32.

39 Interview of William R. Hamilton, Jr. by Commission staff.

40 Section 9 of Chapter 898 of the Acts of 1969; Chapter 633 of the Acts of 1970.

41 State Auditor's Report No. 78-7-S-25, at 16-17.

42 Willard Prince 5/8/79 interview by Commission staff at 3; Francis E. O'Brien, Jr. 5/15/79 interview by Commission staff at 5; William ("Roy") Hamilton, Jr. interview by Commission staff.

CHAPTER VII

CHALLENGES TO MBM'S UMASS/BOSTON CONTRACT

The UMass/Boston project management contract which MBM had sought with such fervor became a source of contention and concern almost as soon as it was awarded to MBM. Indeed, a bill was filed in the Legislature less than six weeks after MBM won the contract -- and before the contract terms had even been negotiated -- to prevent MBM from handling the UMass/Boston project management. Although that bill did not pass, MBM faced an even more severe challenge less than a year later, when a series of scathing newspaper articles led to the formation of a legislative committee to investigate MBM's UMass/Boston contract. MBM felt so threatened that the firm paid tens of thousands of dollars in cash to avoid an unfavorable final report from the legislative committee. Less than a year after those payments concluded, another investigation by a legislative auditor caused concern to MBM. Finally, MBM received much unfavorable publicity from the DiCarlo-MacKenzie trial and the Post Audit Subcommittee hearings in 1977 and 1978. As a result, the very contract which had catapulted MBM into a leading position in the burgeoning project management field contributed to MBM's ultimate demise.

The present chapter considers the pre-1974 challenges to MBM's UMass/Boston contract. The DiCarlo-MacKenzie trial and its aftermath are discussed in Chapter VIII, and the Manzi-Masiello trial and its aftermath are reviewed in Chapter IX. The Post Audit Subcommittee filed a report about its own activities in 1978, and MBM's ultimate collapse is sketched briefly in Chapter II of the present report.

The Bill Filed by
Representative Thomas F. Fallon
in 1970

The UMass/Boston project management contract was viewed by some BBC employees as a challenge, if not an affront, to the BBC. The contract had the effect of removing the largest public building project in the history of the Commonwealth from the BBC's full control and placing it, instead, in the hands of a relatively inexperienced firm from New York.¹ At least part of the decision to hire an outside firm such as MBM appeared to have been the responsibility of the new BBC

¹ See discussion in Chapter IV supra.

Director, Walter J. Poitrast,² and antagonism over Poitrast's selection as BBC Director may have played a part in some BBC employees' opposition to the decision to use an outside firm at UMass/Boston.

James J. Cusack, Poitrast's unsuccessful rival for the BBC Directorship,³ lost no time in trying to restore the UMass/Boston project to full BBC management. He drafted a bill⁴ to delete the statutory provisions⁵ which had permitted the BBC to hire an outside project management firm for UMass/Boston. The Cusack bill, moreover, would have required that only BBC personnel be used in the UMass/Boston project management team.⁶ Further, presumably to forestall Poitrast from engaging MBM officers as "temporary BBC personnel," the Cusack bill would have required that all engineering personnel associated with the UMass/Boston project be registered architects and/or registered engineers.⁷ As Cusack was aware, neither McKee, nor Berger, nor Mansueto, nor MBM Regional Manager Jack Thomas, nor MBM Project Manager C. Ronald Rabin was a registered architect or engineer.⁸

Cusack asked State Rep. Thomas F. Fallon (D-Clinton) to file the bill that Cusack had drafted.⁹ Fallon, who knew Cusack and considered the bill to be

² Id.

³ The Commission has copies of many letters recommending Cusack for the BBC Directorship in 1969.

⁴ "An Act Relative to Personnel for the Design Review and Supervision of Construction of a Campus for the University of Massachusetts in Boston," typescript draft [the Fallon bill], filed by Rep. Thomas F. Fallon, February 2, 1970. Journal of the House, February 2, 1970, at 127.

⁵ See Chapter IV, supra, for a discussion of those provisions.

⁶ Id.

⁷ Id.

⁸ Notes of 5/1/79 interview James J. Cusack by Special Commission staff, at 6.

⁹ Notes of 3/28/80 interview of Representative Thomas F. Fallon by Special Commission staff, at 1.

reasonable, filed the bill on February 2, 1970¹⁰ -- less than six weeks after MBM had won the UMass/Boston contract, and before the terms of the contract had even been negotiated.¹¹

The Fallon bill was "late-filed" -- that is, it was filed after the normal deadline for consideration during the 1970 legislative session.¹² In order to be admitted for consideration on the merits, a petition for admission of the late-filed bill had to be approved by the House Rules Committee.¹³ Most late-filed bills do not clear that hurdle. Nonetheless, when MBM learned of the Fallon bill, it decided to take no chances. Endicott Peabody spoke to House Speaker David M. Bartley about the petition regarding the Fallon bill.¹⁴

Peabody then wrote a note dated February 19, 1970 to his partner Lambert, in which Peabody said: "I have temporarily forestalled a threat to knock out MBM by legislation."¹⁵

Peabody expanded upon this news in a letter to McKee:¹⁶

"I spoke to Speaker Bartley and he is going to bury the legislation in the Joint Rules Committee, and will not report it out. When I next go to Boston, around March 1, I will talk to him about it."

McKee responded by a letter¹⁷ which said:

¹⁰ Journal of the House, February 2, 1970, at 127.

¹¹ See discussion of the contract negotiations in Chapter VI, *supra*. The contract was formally awarded to MBM on December 22, 1969 and signed on April 22, 1970.

¹² The normal filing deadline was the first Wednesday of the previous December. Commonwealth of Massachusetts, Rules of the Senate, House of Representatives, and Joint Rules, Joint Rule 12.

¹³ Id.

¹⁴ Peabody testimony, P.A. 3/29/78 at 22.

¹⁵ Handwritten note dated Thursday, February 19 [1970] at the bottom of memorandum dated February 17, 1970 from Gov. [Endicott] Peabody to Mr. [Jeremiah] Lambert, re: "MBM Fee - University of Massachusetts."

¹⁶ Letter dated February 19, 1970 from Endicott Peabody to Gerald McKee, Jr.

¹⁷ Letter dated February 24, 1970 from Gerald McKee, Jr. to Endicott Peabody.

"I was delighted at the notice that the proposed legislation will not be reported out. I do not know how much of the background of this matter you know, but [BBC Director Poitras's assistant] Fred Kussman or I will be happy to fill you in before you talk to Speaker Bartley."

Peabody's time records reflect a call to Bartley on March 11, 1970.¹⁸ Peabody has testified that he telephoned Bartley on that day to make sure that the Fallon bill was not reported out of the Rules Committee.¹⁹ The bill did, in fact, die in the Rules Committee.

Although the Fallon bill had been withheld from consideration on the merits by the Legislature for 1970, there was no guarantee that the Fallon bill or some similar bill would not be filed in a timely fashion for the 1971 legislative session. As previously noted, one of the requirements that the Fallon bill would have imposed was that engineering functions on the UMass/Boston project be performed only by registered engineers or registered architects. None of the top MBM officials on the project or in MBM's New York office would have qualified on that basis, as mentioned above. Moreover, McKee for one was not convinced that he could pass an engineering examination, at least not without taking substantial time away from MBM business in order to study for the examination.²⁰ MBM decided in 1970 to seek a Massachusetts engineering license for the firm.²¹ MBM had obtained an engineering license in New York in 1967 by acquiring a defunct firm that possessed an engineering license.²² For Massachusetts, however, it was necessary to designate someone as MBM's "chief engineer" and have that individual's personal engineering license serve as the basis for the firm's obtaining an engineering license.²³

¹⁸ Peabody law firm MBM tab card IV, entry for 3/11/70.

¹⁹ Peabody testimony, P.A. 3/29/78 at 132. When Commission staff interviewed David Bartley in 1979, Bartley said that he had no recollection of Peabody's having contacted him in 1970 about the Fallon bill. Notes of 10/16/79 interview of David M. Bartley by Special Commission staff, at 2.

²⁰ Letter dated December 1, 1970 from Gerald McKee, Jr. to Jeremiah D. Lambert, re: "Engineering License in Massachusetts."

²¹ See letter dated November 27, 1970 from MBM attorney Hartley J. Chazen to Jeremiah D. Lambert, concerning a Massachusetts engineering license.

²² MBM SEC Registration Statement, Amendment 1, filed July 25, 1969, at 3.

²³ G.L. c.112 s.81R(f). See also letter dated December 7, 1970 from Jeremiah D. Lambert to Gerald J. [sic] McKee, Jr.

Stanley Davis, who worked for MBM in 1970, testified to the Commission that he was asked to apply for a Massachusetts engineering license which would serve as the basis for an MBM Massachusetts engineering license.²⁴ Davis was both a registered architect and a registered engineer.²⁵ Davis testified that he refused to participate in such an exercise, since he was not actually working on the UMass/Boston project and since he was not acting, even in New York, as "chief engineer."²⁶

Another MBM employee who was a registered engineer was Paul Spindel.²⁷ Spindel was the head of MBM's computer operations and was not, according to Spindel, actively spending much time working as an engineer.²⁸ He also was based in New York, working on the UMass/Boston project only one or two days per month.²⁹ Spindel agreed to accept the title of "chief engineer" and to obtain a Massachusetts engineering license.³⁰ He was assisted in his application by the Peabody firm.³¹ Spindel left MBM in 1971.³² Spindel says that he left because he became uncomfortable with MBM's methods of operation.³³

²⁴ Davis testimony, Sp. Comm. 5/29/80 at 9.

²⁵ Davis 12/11/79 interview, at 5.

²⁶ Davis testimony, Sp. Comm. 5/29/80 at 9. See also Davis 12/11/79 interview, at 1.

²⁷ Notes of 11/11/79 interview of Paul D. Spindel by Special Commission staff, at 1.

²⁸ Id.

²⁹ Id.

³⁰ Id.

³¹ Letter dated February 10, 1971 from Paul D. Spindel's secretary Joanna Raymond to Jeremiah D. Lambert, concerning Spindel's background and professional qualifications; letter dated February 18, 1971 from Peabody law firm attorney Roger M. Golden to Amos E. Kent, Chairman of the Board of Registration of Professional Engineers, making an application on behalf of Paul D. Spindel "to practice professional engineering" in Massachusetts; letter dated February 25, 1971 from Jeremiah D. Lambert to Paul D. Spindel, enclosing a temporary registration permit to practice engineering in Massachusetts; letter dated March 3, 1971 from Paul D. Spindel to Jeremiah D. Lambert, thanking him for his help in obtaining MBM's temporary permit.

³² Spindel 11/11/79 interview at 1.

³³ Id.

The Newspaper Articles in 1971

Criticizing MBM's

UMass/Boston Contract

Scarcely a year after the Fallon bill was disposed of, MBM faced a new and more serious challenge. It began with a series of newspaper articles by a syndicated columnist named Wendell Woodman, whose articles were carried in many newspapers outside of Boston. The articles were highly critical of MBM's UMass/Boston contract. Since the articles led to the formation of the DiCarlo-Sirianni committee -- starting the chain of events which led to the DiCarlo-MacKenzie trial, the Post Audit hearings, and the creation of the Commission -- the Commission attempted to determine what inspired Woodman to write about MBM in the first place.

The answer, it seems, is twofold. First, Woodman had long been concerned with UMass/Boston and, in particular, with the safety of the Columbia Point site.³⁴ Woodman was convinced that there was a serious risk that the entire UMass/Boston campus might explode as a result of methane gas deposits under the surface of the land-filled Columbia Point site. Woodman was not alone in this concern, since the Legislature ordered methane studies in 1970 before permitting UMass/Boston construction to proceed.³⁵ Although the methane consultants concluded that the problem was manageable, Woodman was not persuaded.³⁶ Thus, any means to slow or halt the UMass/Boston project seemed worthwhile.³⁷

³⁴ Wendell H. Woodman, "UMass Trustees Knew of Methane Concentrations at Columbia Point," New England News Service Release dated July 16, 1970, and "Columbia Point Out as Campus Site, Watertown Land Is Bought," New England News Service Release dated July 17, 1970. See also notes of 10/11/79 interview of Wendell H. Woodman by Special Commission staff, at 1.

³⁵ Acts of 1970, c. 633, approved August 7, 1970.

³⁶ Woodman, "Shavings by Woodman," 4/1/77 at 3.

³⁷ Woodman 10/11/79 interview, at 3.

Second, Woodman found a willing researcher in another individual who had his own reasons for wanting to see articles critical of MBM. William F. McDermott, an MDC employee who had been appointments secretary to Governor John A. Volpe and a campaign and staff assistant to Republican United States Representative Margaret Heckler,³⁸ wanted to do anything he could to hurt MBM.³⁹ His motivation was personal: the woman he had been seeing had left him for a man who had a high position on MBM's project management team.⁴⁰ Since the woman also worked for MBM as a secretary,⁴¹ McDermott had additional reason for wanting to harm MBM.⁴²

The foregoing information was derived from interviews with Woodman, McDermott, and the woman friend. The Commission considered the possibility that McDermott may have had some political motivation -- such as helping Albert Manzi (whom McDermott knew from the Volpe governorship)⁴³ put pressure on MBM. The Commission could find no evidence to support or refute such a political consideration. McDermott agreed to be polygraphed on the subject by a mutually-agreed-upon examiner, and the examiner concluded, after administering the tests, that McDermott was telling the truth about having been motivated only by revenge against his former woman friend.⁴⁴

³⁸ Notes of 9/28/79 interview of William F. McDermott by Special Commission staff, at 1.

³⁹ Id. at 2.

⁴⁰ Notes of 5/22/80 interview of McDermott's woman friend, at 1. McDermott 5/23/80 interview at 3.

⁴¹ MBM New England Regional Office Personnel List.

⁴² McDermott 9/28/79 interview, at 2.

⁴³ Id. at 2-3.

⁴⁴ Report dated June 2, 1980 of polygraph examination extended to William F. McDermott on June 2, 1980, prepared by Edward J. McGrath, staff examiner for Scientific Security -- Raymond S. August, Inc. The polygraph examination included the following questions: "Did you withhold from the Special Commission the true reason you gave that MBM contract to Woodman?" "Did you lie to the Special Commission Attorneys about the real reason you gave Woodman that MBM contract?" "Did you give Woodman that MBM contract, because a political figure asked you to do so?" The examiner concluded that the examination supported the truthfulness of McDermott's "no" answers to these questions.

McDermott obtained a copy of the MBM-UMass/Boston contract on January 28, 1971 from the State Comptroller's office.⁴⁵ According to McDermott, one of the Comptroller's assistants commented at the time that it was "about time that someone looked at that contract."⁴⁶ McDermott began to prepare a "research dossier" containing information about MBM.⁴⁷ MBM somehow obtained a copy of this "black book" before the end of 1971.⁴⁸ According to notes of a 1975 interview of MBM Vice President Jack Thomas by an MBM lawyer,⁴⁹

"Peabody's old driver, Eddie Carroll ... stole book for Peabody and sent it to Jack Thomas."

Carroll denied that, when questioned by Commission staff.⁵⁰ McDermott wanted his former woman friend to feel that he was in a key position in regard to MBM's fate, so he sent her advance copies of the Woodman articles.⁵¹ Thus, MBM was able to start reacting even before the articles appeared in print. Before a discussion on MBM's response to the articles, it is worthwhile to consider what the articles said.

The Woodman articles comprised a five-part series entitled "Let Me Call You Sweetheart."⁵² Their theme was that MBM had obtained an unprecedented and outrageous sweetheart contract for work at UMass/Boston. In the first article, Woodman charged that the contract had been "negotiated (or not negotiated)

⁴⁵ Memorandum dated January 28, 1971, from Tina Giardiello to M. Joseph Stacey, Comptroller.

⁴⁶ McDermott 9/28/79 interview at 2.

⁴⁷ Id.; Woodman 10/11/79 interview at 7.

⁴⁸ Notes of 4/10/75 interview of Jack S. Thomas by attorney Robert G. Smith of Monasch Chazen & Stream.

⁴⁹ Id. MBM voluntarily waived any attorney-client privilege on this and other matters before the attorney made the records available to the Commission. See letter dated September 13, 1979 from Gerald McKee, Jr. to Arnold C. Stream, waiving attorney-client privilege.

⁵⁰ Notes of 7/31/79 interview of Edward C. Carroll by Special Commission staff, at 4-5.

⁵¹ Interview of McDermott's woman friend.

⁵² Wendell H. Woodman, five-part series entitled "Let Me Call You Sweetheart," New England News Service release, February 8-12, 1971.

under circumstances that may generously be described as suspicious" and that an analysis of the contract indicated that "there was collusion between the BBC and [MBM], and possibly conspiracy." The article added that "one expert" [unidentified] had described the contract's fee schedule as "unconscionable."⁵³

Additional charges were contained in the succeeding articles, and the final one⁵⁴ concluded with the following recommendations:

"First, the BBC should terminate the contract.

"The Attorney General should consider what action the Commonwealth might take to investigate the possibility of collusion or, at worst, criminal conspiracy involved in the awarding of the contract.

"It would be in order for the Legislature to investigate how such a preposterous contract could have been agreed to by a state agency, and whether the BBC has been guilty of misfeasance in delegating its responsibilities to a consultant exempted from liability.

"It would also be in order for the Commissioner of Administration to figure out how this gravy-boat contract will upset current budget estimates for phase I construction costs."

Although the Woodman articles were inaccurate in some respects, MBM was upset and very concerned about the articles. MBM had advance copies of the articles, from McDermott, and even before the first article appeared in print McKee called Endicott Peabody's partner Jeremiah Lambert and -- according to Lambert's contemporaneous memorandum to Peabody⁵⁵ --

"Jerry [McKee] wants us to call him back right away with advice as to steps which might be taken to blunt the effect of the articles. He mentioned contacting Governor Sargent; I told him you and I would discuss the matter and get right back to him."

On February 8, 1971, the date that the first Woodman article was published, Lambert wrote another memorandum to Peabody, reporting on a telephone conversation that Lambert had had that day with McKee's assistant, L. Bradford

⁵³ Woodman, "Let Me Call You Sweetheart - I. The back to end contract," New England News Service release, February 8-12, 1971.

⁵⁴ Woodman, "Let Me Call You Sweetheart - V. A commentary," New England News Service release, February 8-12, 1971.

⁵⁵ Memorandum dated February 5, 1971 from J.D.L. [Jeremiah D. Lambert] to E.P. [Endicott Peabody].

Perkins.⁵⁶ According to Lambert's memorandum --

"Brad Perkins ... said Jerry McKee is very concerned and wishes to respond [to the Woodman articles]....

"I told Brad your initial reaction, as someone seasoned in Massachusetts politics, was not to respond immediately, since that would tend to heighten the controversy rather than muffle it. I did mention, however, that it would be worthwhile for MBM to prepare a point-by-point rebuttal for possible use in discussions with state officials and legislators -- prior to any attempt at public rebuttal.

"... Brad ... said that he felt Woodman's points could be easily enough overcome....

"... I realize that you may be sensitive to the political overtones of your involvement in the contract's going to MBM but do hope you can intervene as necessary."

It should be noted that the Woodman articles made no mention of Peabody. For that matter, Peabody's assistance to MBM in obtaining the contract was denied by McKee during the 1977 DiCarlo-MacKenzie trial⁵⁷ (although it was mentioned by Peabody);⁵⁸ denied by Mansueto at the Post Audit hearings of 1978;⁵⁹ and denied again by Mansueto at the 1979 Manzi-Masiello trial⁶⁰ even though McKee, Peabody, and MBM salesman Martin Heyman had testified at length at the 1978 Post Audit hearings about Peabody's having helped MBM win the UMass/Boston contract.⁶¹

On February 8, 1971, Peabody responded to Lambert with a handwritten memorandum⁶² saying:

"I will be delighted to work + help on the rebuttal, since I know a lot first hand. But my name in print would just put more kerosene on the fire so I'll work with you + NYC + Boston but from here [Washington, D.C., where Peabody's office was located]."

⁵⁶ Memorandum dated February 8, 1971 from J.D.L. [Jeremiah D. Lambert] to E.P. [Endicott Peabody].

⁵⁷ McKee testimony, 6 DiC 2/1/77 at 3-4, 9-11, 136-137.

⁵⁸ Peabody testimony, 7 DiC 2/2/77 at 157; 8 DiC 2/3/77 at 31-32.

⁵⁹ Mansueto testimony, P.A. 5/23/78 at 25-27, 39-40; P.A. 6/9/78 at 100.

⁶⁰ Mansueto testimony, 5 M/M 2/16/78 at 49; 8 M/M 2/21/79 at 65.

⁶¹ McKee testimony, P.A. 3/22/78 at 18-28. Peabody testimony, P.A. 3/7/78 at 98-107 and passim. Heyman testimony P.A. 3/6/78 at 17-19, 23-26.

⁶² Handwritten memorandum dated February 8, 1971 from "Chub" [Endicott Peabody] to "Jerry" [Jeremiah D. Lambert].

On February 9, 1971, Peabody met in New York with McKee, Thomas, and McKee's New York lawyer. According to Peabody's memorandum about the meeting⁶³ --

"McKee is exceedingly concerned that the series will have an adverse effect on [MBM's] future in and out of Massachusetts and was anxious to take some action. Alternatives considered were:

- "1. Notify the newspaper editors of libel action.
- "2. Obtain an article or a series of articles describing the real services MBM is providing and the saving of substantial sums of money to the Commonwealth,
- "3. Going to the Governor or the Lt. Governor and taking joint action which might involve 1 and 2 above,
- "4. Rebutting fully and in detail the columns of Woodman....

"... I recommended that [McKee] should go to a Boston consultant with a first rate public relations firm.... After some consideration I recommended John C. Dowd, Sr., who is head of one of the oldest firms in Boston and has recently been public relations counsel to the Kennedys and their campaigns and to John Volpe in his last campaign for Governor.... Further, I suggested I would be willing to arrange a meeting for them with Lt. Governor Dwight who was Commissioner of Administration and had approved the MBM contract on April 27 [sic], 1970. Dwight has the additional benefit of being a newspaperman in his own right and would probably have good judgment as to how the matter should be handled. As for myself I suggested that I would be happy to help further in any way and that to my knowledge MBM had nothing to be ashamed of...."

MBM apparently never did bring the libel action. The Commission does not know whether there was a meeting with Dwight. MBM did prepare a written rebuttal,⁶⁴ and it did engage the Dowd firm.⁶⁵

It was at about this time that, according to Jack Thomas, Peabody was told generally about MBM's other problems in Massachusetts and specifically about the MBM corporate checks from October 1970 to Senate President Kevin Harrington and (via William Masiello and James Kelly) to the gubernatorial campaign of Kevin

⁶³ Memorandum dated February 10, 1971 to Mr. [Jeremiah] Lambert from Governor [Endicott] Peabody.

⁶⁴ See letter dated February 18, 1971 from Gerald McKee, Jr. to Joseph DiCarlo, Ralph Sirianni, and William Hogan, with attached documents prepared in rebuttal to Woodman's articles.

⁶⁵ Letter dated February 12, 1971 from John C. Dowd and Roger Dowd to MBM.

White.⁶⁶ According to Thomas, MBM was advised at that time, perhaps by Peabody, that such corporate contributions were illegal and that the checks should be removed from MBM's office and placed in a safe deposit box.⁶⁷ Thomas also has recalled that either at this meeting or shortly thereafter Peabody was told of MBM's \$10,000 cash payment to Manzi in October 1970, and that Peabody said that the MBM check which had generated the cash should go to a safe deposit box.⁶⁸ When the Commission questioned Peabody about these matters in 1980, Peabody acknowledged that he had recommended that the Harrington and Masiello-Kelly-White checks be placed in a safe deposit box outside of MBM's office,⁶⁹ and Peabody said that he recalled the discussion of those checks having occurred in New York on February 9, 1971.⁷⁰ But, he testified that he was not aware that corporate checks were involved, and that he had suggested removal of the checks simply "because of the [bizarreness] of the contributions...."⁷¹ He also said that he believed that he did not learn of the Manzi payment during February 1971.⁷²

MBM hired the Dowd firm on February 10, 1971, at a fee of \$25,000 per year, to provide public relations representation in connection with MBM's UMass/Boston contract.⁷³ Dowd quickly went to work on MBM's behalf. According to a

⁶⁶ Written statement dated June 12, 1980 executed by Jack S. Thomas in London, England, at 1.

⁶⁷ Id.

⁶⁸ Id. at 1-2.

⁶⁹ Peabody testimony, Special Commission 6/19/80 at 166-167.

⁷⁰ Id. at 168.

⁷¹ Id. at 159-160.

⁷² Id. at 164, 167-168.

⁷³ Dowd 2/12/71 letter to MBM. The Dowd firm was never paid in full by MBM. Shortly after MBM learned that the DiCarlo-Sirianni report would not be critical of MBM, the firm decided that it would be unnecessary to continue using -- or paying -- the Dowd firm. See letter dated October 19, 1971 from Kay Lowenthal, on McKee's stationery, to Jack S. Thomas, concerning the termination of the Dowd contract. John C. Dowd died in July 1971 and apparently left no notes or memoranda about his representation of MBM.

memorandum dated February 10, 1971 and apparently written by William McDermott,⁷⁴ Dowd telephoned Boston Herald publisher John Herbert regarding the unfavorable publicity MBM had been getting -- and requested that the Herald run what McDermott labelled "a puff piece." The reason why Dowd called Herbert, according to McDermott's memorandum, is that Herald reporter Thomas C. Gallagher had called BBC Director Walter Poitras regarding a story that Gallagher was going to write about MBM, and Poitras had reported Gallagher's call to MBM, who called Dowd. Dowd's alleged call apparently came too late, because the Gallagher story ran on the Herald's editorial page the following day.⁷⁵

The Gallagher article stated that there were "estimates that [MBM] would ultimately reap fees in excess of \$30,000,000 by the time the entire university complex is finished." Gallagher reported, further, that three state legislators had drafted an order calling for a legislative investigation of MBM's UMass/Boston contract.

We turn now to a consideration of that order and the legislative investigation that resulted.

The Investigation in 1971
by a Special Legislative Committee
Chaired by Senator Joseph J.C. DiCarlo
and Representative Ralph L. Sirianni, Jr.

The Filing of an Order
by DiCarlo, Sirianni, and
Representative William F. Hogan
Calling for an Investigation
of MBM's UMass/Boston Contract

Wendell Woodman and William McDermott had not left to chance whether there would be a legislative investigation of the MBM contract. They had not only sought to provoke legislative action through the "Sweetheart" series, but they had also attempted to recruit the legislators to head up the investigation. Even before the first Woodman article appeared in print, Woodman and McDermott met with Representative Ralph L. Sirianni, Jr. to suggest a legislative investigation of the MBM contract.⁷⁶ After persuading Sirianni of the merits of such an

⁷⁴ Handwritten memorandum dated February 10 [1971] headed "Gallagher," probably in the handwriting of William F. McDermott. McDermott 9/28/79 interview at 2.

⁷⁵ Thomas C. Gallagher, "Concerning Consultants," Boston Herald Traveler, February 11, 1971, at 16.

⁷⁶ Testimony of Ralph L. Sirianni, 17 DiC 2/16/77 at 8-9. Woodman 10/11/79 interview at 5.

investigation, Woodman and McDermott, accompanied by Sirianni, met with Sirianni's friend, Senator Joseph J.C. DiCarlo, to ask him to co-sign the bill ("order") calling for such an investigation.⁷⁷

DiCarlo, only 35 years old, was in his first term as a State Senator, having previously served in the State House of Representatives along with Sirianni.⁷⁸ DiCarlo had supported Kevin Harrington in the January 1971 contest for State Senate President ⁷⁹ -- the Commonwealth's highest legislative position -- and Harrington's success augured well for DiCarlo. According to DiCarlo, Harrington had promised DiCarlo late in 1970 that DiCarlo would be brought along quickly, first as Chairman of the Senate Committee on Counties, then as Senate Majority Whip ("Assistant Majority Leader"), then as Senate Majority Leader, and finally -- in just a few years -- as Harrington's successor as Senate President.⁸⁰ In January 1971, DiCarlo was named Chairman of the Committee on Counties, and before 1971 was out, DiCarlo became Senate Majority Whip.⁸¹ It was clear in the Legislature that DiCarlo's star was in the ascendant.

DiCarlo agreed to co-sign the order calling for a legislative investigation of MBM's UMass/Boston contract.⁸² The proposed order was also co-signed by Rep. William F. Hogan (D-Everett), whose desk at the State House was in the same area as Sirianni's.⁸³

The proposed order, filed on February 11, 1971, called for a special legislative committee to be established for the exclusive purpose of investigating MBM's UMass/Boston contract.⁸⁴ MBM reacted quickly to this intensified threat.

⁷⁷ Sirianni testimony, 17 DiC 2/16/77 at 7.

⁷⁸ Sirianni testimony, 17 DiC 2/16/77 at 5.

⁷⁹ DiCarlo 12/8/78 interview at 1.

⁸⁰ DiCarlo testimony, Sp. Comm. 6/3/80 at 50; DiCarlo 12/8/78 interview at 1.

⁸¹ DiCarlo testimony, Sp. Comm. 6/3/80 at 90, 92.

⁸² Sirianni testimony, 17 DiC 2/16/77 at 7; DiCarlo 12/8/78 interview at 2.

⁸³ Notes of 10/24/79 interview of Ralph E. Sirianni, Jr. by Special Commission staff, at 1.

⁸⁴ House Order 5086; Journal of the House of Representatives, 1971, at 764.

The February 1971
Meeting at DiCarlo's Home

On February 12, 1971 Endicott Peabody came to Boston and billed MBM for 12 hours of work.⁸⁵ His billing record for MBM for February 12, 1971 says: "Boston -- all day conference -- Speaker -- Zabriskie -- DiCarlo."⁸⁶ Peabody testified that he did not meet DiCarlo on February 12, 1971, although he tried to make contact with DiCarlo.⁸⁷ Peabody's billing record may reflect a discussion on that date about DiCarlo.

Peabody and DiCarlo did, however, meet at DiCarlo's house in Revere later in February of 1971.⁸⁸ The meeting apparently took place on Sunday, February 21, 1971.⁸⁹ DiCarlo recalls the meeting as having taken place on that date,⁹⁰ and Peabody has agreed that the meeting may have occurred then.⁹¹ A Hertz car rental agreement signed by Peabody is dated February 21, 1971 and contains mileage (33 miles) consistent with a round-trip drive between the rental site (Logan Airport) and DiCarlo's home (in Revere). Also tending to support February 21, 1971 as the date of the meeting is the possibility that the meeting

⁸⁵ Peabody daily office record, 2/12 [1971].

⁸⁶ Id.

⁸⁷ Peabody testimony, 8 DiC 2/3/77 at 71, 100.

⁸⁸ DiCarlo testimony, Sp. Comm. 4/7/80 at 29; Peabody testimony, 7 DiC 2/2/77 at 171-182.

⁸⁹ See Hertz car rental agreement dated February 21, 1971, signed by Endicott Peabody, for a car rental at Logan Airport. See further discussion below.

⁹⁰ DiCarlo 12/8/78 interview at 3.

⁹¹ Peabody testimony, 7 DiC 2/2/77 at 181-182; 8 DiC 2/3/77 at 106. DiCarlo has repeatedly insisted that Peabody testified that the meeting occurred on February 18, 1971 -- and that that constituted perjury. See, e.g., DiCarlo 12/8/78 interview at 4-5. Peabody clearly stated that the meeting occurred either on February 21, 1971 or on February 18, 1971. See, e.g. Peabody testimony, 7 DiC 2/2/77 at 181-182; 8 DiC 2/3/77 at 106. MBM President Gerald McKee, Jr., unlike Peabody, did mention only February 18, 1971 as the date of the meeting. McKee testimony, 6 DiC 2/1/77 at 138. But even if McKee was mistaken about the date, there is evidence, discussed below, that McKee was in the Boston area on February 21, 1971 and thus could have been present at DiCarlo's house on February 21, 1971.

may have been arranged by Senate President Kevin Harrington;⁹² Peabody's MBM time record for February 1971 lists a contact with Harrington only on February 20, 1971.⁹³

There is great disagreement between DiCarlo and Peabody, however, about what DiCarlo said at the meeting and whether MBM President McKee was present. According to DiCarlo, DiCarlo treated Peabody with great deference when they met on February 21, 1971, and Peabody merely exchanged pleasantries with DiCarlo's family and left off some information about MBM.⁹⁴ Peabody testified, by contrast, that DiCarlo used vulgarities and told Peabody that it would just be too bad if MBM got hurt, but that DiCarlo intended to advance his own political ambitions by conducting hearings that would embarrass Donald Dwight.⁹⁵ Peabody testified that McKee was present at the DiCarlo-Peabody meeting.⁹⁶ McKee testified consistently with Peabody's testimony, adding that DiCarlo's attitude and manner made McKee fearful for MBM's future.⁹⁷

DiCarlo has claimed that Peabody and McKee committed perjury not only in describing what DiCarlo said on February 21, 1971, but also in saying that McKee was present.⁹⁸ DiCarlo says that Peabody and McKee lied in order to enable the prosecutor at the DiCarlo-MacKenzie trial to get the damaging Peabody-McKee testimony about the February 21, 1971 meeting admitted into evidence.⁹⁹

It is true that Judge Skinner ruled, at the DiCarlo-MacKenzie trial, that the McKee-Peabody testimony about the February 1971 meeting at DiCarlo's house was admissible only to show McKee's "state of mind" regarding the alleged extortion

⁹² Peabody testimony, 8 DiC 2/3/77 at 95-96.

⁹³ Peabody law firm MBM tab cards XIV and XV, for February 1971.

⁹⁴ DiCarlo 12/8/78 interview at 3-4.

⁹⁵ Peabody testimony, 7 DiC 2/2/77 at 175-177; 2/3/77 at 62.

⁹⁶ Peabody testimony, 7 DiC 2/2/77 at 171-175.

⁹⁷ McKee testimony, 3 DiC 1/26/77 at 126-132, 4 DiC 1/27/77 at 4.

⁹⁸ DiCarlo testimony, Sp. Comm. 4/7/80 at 29; DiCarlo 12/8/78 interview at 3-5.

⁹⁹ DiCarlo 12/8/78 interview at 4-5.

that later took place.¹⁰⁰ Thus, if McKee had not testified that he was present at the February 1971 meeting, all (Peabody's) testimony about the meeting would have been inadmissible.

But there are several reasons to doubt DiCarlo's assertions about what happened on February 21, 1971. First, DiCarlo has repeatedly insisted that McKee was not in Massachusetts on February 21, 1971 and thus could not have come to DiCarlo's house that day.¹⁰¹ But DiCarlo has offered no proof that McKee was anywhere else on that day, and the Commission has found MBM telephone records which show a telephone call made from Hyde Park, Massachusetts on February 21, 1971 and charged to McKee's personal telephone credit card.¹⁰² Second, DiCarlo has claimed that Peabody and McKee were lying about DiCarlo saying that he wanted to run for Lieutenant Governor against Donald Dwight.¹⁰³ DiCarlo has insisted that everyone knew in 1971 that DiCarlo was aiming toward becoming Senate President and had no interest in the Lieutenant Governorship.¹⁰⁴ But the Commission has found newspaper articles by several reporters who wrote, in 1971, that DiCarlo was thinking of running for Lieutenant Governor against Dwight.¹⁰⁵ Moreover, both former Rep. J. Hilary Rockett (in an interview) and William V. Masiello (in testimony) told the Commission that DiCarlo had told them in 1971 that he was planning to run for Lieutenant Governor.¹⁰⁶ Third, Peabody's contemporaneous handwritten notes (contained in a spiral steno

¹⁰⁰ Instruction of the Court, 4 DiC 1/27/77 at 4.

¹⁰¹ Defendants' Motion for a New Trial, United States v. DiCarlo, MacKenzie, at 5. DiCarlo testimony, Sp. Comm. 4/7/80 at 29.

¹⁰² MBM telephone records.

¹⁰³ DiCarlo 12/8/78 interview at 5.

¹⁰⁴ Id.

¹⁰⁵ See, e.g., Thomas C. Gallagher article, Boston Herald Traveler, May 13, 1971.

¹⁰⁶ Notes of 10/17/79 interview of former Representative J. Hilary Rockett by Special Commission staff, at 1; William Masiello testimony, Sp. Comm. 6/24/80 at 43.

pad)¹⁰⁷ support the Peabody-McKee version of the conversation:

"Ball game -- not going to play. Next step -- Regret.

"Play it straight. Do something. Consider effect of having press conference. Making available to press. Try Dowd.

"Mid[dlesex] Court House --

"DiCarlo everything he can do to hurt us. Know the [contract] was straight. More than counterpunch.

"Jerry McKee.

"How when -- What Reason[?]

"Letters to the Editor."

Finally, it must be observed that it would appear to be far more in DiCarlo's interest than in Peabody's or McKee's to lie about the February 21, 1971 meeting. And DiCarlo's admissions to the Commission that he accepted cash from MBM demonstrate that DiCarlo has been willing to lie in the past about MBM -- such as in DiCarlo's 1977 post-conviction speech to the State Senate in which DiCarlo insisted that he had not taken one cent from MBM.¹⁰⁸

Changes in the Wording of the
Order Calling for an Investigation
of MBM's UMass/Boston Contract

Having failed to dissuade DiCarlo from investigating MBM's UMass/Boston contract, Peabody pursued efforts that he had already commenced to alter the language of the proposed legislation establishing an investigative committee. Peabody attempted to persuade Representative Paul Murphy, chairman of the Joint Rules Committee, to delete the legislation's specific mention of MBM.¹⁰⁹ As Peabody explained to the Commission, MBM believed that MBM's competitors would be able to use the legislation, as originally drafted, to hurt MBM's business in other states.¹¹⁰ Thus, Peabody wanted all references to MBM eliminated, with

¹⁰⁷ Memorandum undated (but after February 16, 1971) in Peabody's spiral steno pad.

¹⁰⁸ Journal of the Senate, 1977, I, at 338. See also what appears to be a transcript of DiCarlo's speech, Boston Globe, March 28, 1977 (P.M. edition).

¹⁰⁹ Peabody testimony, Sp. Comm. 6/19/80 at 177; Peabody law firm MBM tub card XV, entry for 2/16/71.

¹¹⁰ Peabody testimony, Sp. Comm. 6/19/80 at 177.

descriptive or generic terms substituted.¹¹¹ Peabody's effort in this regard proved successful. When the Massachusetts House of Representatives adopted the legislation on March 1, 1971, all specific mention of MBM was gone.¹¹²

The House then referred the legislation to the State Senate, and on March 2, 1971 the State Senate referred it to the Senate Ways and Means Committee.¹¹³ The Senate Ways and Means Committee was chaired by James A. Kelly, Jr., at whose suggestion MBM had made \$2,000 contributions to Kevin Harrington and (indirectly) to Kevin White in October 1970.¹¹⁴ MBM thus had reason to hope that the DiCarlo-Sirianni-Hogan legislation could be scuttled in committee, which is what had happened to the Fallon bill (in a different committee) the year before.

MBM's Discussions with
Kelly about the
DiCarlo-Sirianni-Hogan Legislation

James A. Kelly, Jr. had, like DiCarlo, gained his chairmanship as a result of supporting Kevin Harrington's bid for the Senate Presidency.¹¹⁵ As head of the Senate Ways & Means Committee, Kelly had the opportunity to play a major role in influencing legislation that could affect the profits of private companies.¹¹⁶

Kelly had no fondness for Endicott Peabody dating back to Peabody's days as Governor.¹¹⁷ Thus, it was left to MBM Vice President Anthony Mansueto to deal with Kelly.

Mansueto had met with Kelly on February 25, 1971 in reference to the DiCarlo-

¹¹¹ Id.

¹¹² See House of Representatives Order 5086, dated March 1, 1971; Journal of the House of Representatives, 1971, I at 822.

¹¹³ Journal of the Senate, 1971, I at 749.

¹¹⁴ See discussion of these checks in Chapter V supra.

¹¹⁵ Kelly testimony, P.A. 5/12/78 at 54; William Masiello testimony, Sp. Comm. 6/24/80 at 17.

¹¹⁶ See the sections on Kelly and the Masiello brothers, in Volume 5 of this Final Report.

¹¹⁷ DiCarlo 12/8/78 interview, at 6-7.

Sirianni-Hogan legislation.¹¹⁸ The meeting took place at Sablone's Restaurant in East Boston, and William Masiello and lobbyist Charles Kougeas were also present (according to Masiello's testimony).¹¹⁹ During the course of the discussion, Masiello has testified, Mansueto wanted to know what the \$4,000 of contributions that MBM had made at Kelly's request in October 1970 would "buy" MBM in regard to the DiCarlo-Sirianni-Hogan legislation.¹²⁰ Mansueto and Masiello both agree that Kelly said that he would look into the DiCarlo-Sirianni-Hogan legislation and meet with Mansueto in Florida during March of 1971.¹²¹ Mansueto and Masiello also have testified that Kelly said that MBM should not use Peabody on the DiCarlo-Sirianni-Hogan legislation and/or investigation.¹²²

Mansueto telephoned Peabody after the meeting, and Peabody wrote a memorandum¹²³ about the conversation. According to the memorandum, Kelly had made the following points at the luncheon meeting with Mansueto:

"1. Why are we upset? They did not start it. Someone spoke to Woodman. They are trying to control it but it is a problem. Some people don't want UMass to happen. DiCarlo has ambitions. By seeing DiCarlo ourselves we made it difficult for Kelly.

"2. I [Peabody] should not be in the case openly.... People say I have political ambitions and they don't trust me and I should stay out of the case. MBM should hire a Boston attorney.... He [Kelly] will call Mansueto and tell him who is best for them.

¹¹⁸ Mansueto pocket calendar, 2/25/71; William Masiello testimony, Sp. Comm. 6/24/80 at 37-38.

¹¹⁹ William Masiello testimony, Sp. Comm. 6/24/80 at 38; notes of 4/26/79 interview of William R. DiMento by Special Commission staff; Mansueto pocket calendar, 2/25/71.

¹²⁰ Id. at 38.

¹²¹ Id.; Mansueto testimony, 9 DiC 2/4/77 at 18, 39-40. Kelly has denied this. Kelly testimony, P.A. 5/12/78 at 81-83, 102.

¹²² William Masiello testimony, Sp. Comm. 6/24/80 at 38; Mansueto testimony, 9 DiC 2/4/77 at 39.

¹²³ Memorandum dated February 25, 1971 from Endicott Peabody to Jeremiah D. Lambert.

"3. There will be a private investigation of the matter. MBM will probably be called. Provided MBM works closely with him, they will go on and he can see \$10 million in fees -- possibly the Worcester Center."

The reference to the "Worcester Center" probably has to do with UMass/Worcester and the bill that Kelly filed in October of 1970 apparently for the purpose of helping MBM obtain a contract at UMass/Worcester.¹²⁴ Peabody's memorandum concluded:

"Mansueto feels that he, McKee and I should sit down next week and appraise the situation in light of the then circumstances."

As previously mentioned, the DiCarlo-Sirianni-Hogan legislation was referred to Kelly's Ways & Means Committee on March 2, 1971. It was still pending there on March 16, 1971 when Mansueto flew to West Palm Beach, Florida,¹²⁵ where Kelly was staying.¹²⁶ In a memorandum dated March 16, 1971, Peabody's partner Jeremiah Lambert wrote to Peabody:¹²⁷

"I spoke to Jerry [McKee] a few minutes ago (4:15 P.M.). He indicates that Tony may have other good reasons to be in Florida when Kelly is there; and, at risk of exacerbating the situation, he believes, as does Tony, that Tony should see Kelly. Jerry remains firm in his view that we should continue to represent MBM. He said Tony will note simply that our firm, and yourself, have been in on this matter from the beginning and should not be dropped now. I detect no lack of confidence in you or us."

"Jerry suggests that Thursday would be better for a meeting than Friday -- either here or in New York. I'd like to confirm a Thursday date. What is your preference as to time and location?"

Peabody responded to Lambert with a handwritten note:¹²⁸

"My advice not to see him is that Kelly will only make him feel worse. At some point you have to go your own way -- politely and we have passed that point."

On March 17, 1971 Mansueto met with Kelly in Florida.¹²⁹ Mansueto has said that William Masiello was present, which both Kelly and

¹²⁴ See discussion in Appendix C of MBM's attempt to win a project management contract at the UMass/Worcester Medical School.

¹²⁵ Mansueto testimony, 9 DiC 2/4/77 at 43.

¹²⁶ Mansueto testimony, P.A. 5/23/78 at 63-66.

¹²⁷ Memorandum dated March 16, 1971 from J.D.L. [Jeremiah D. Lambert] to E.P. [Endicott Peabody], with Peabody's handwritten response. Emphasis omitted.

¹²⁸ Id.

¹²⁹ Mansueto testimony, P.A. 5/23/78 at 62.

Masiello have denied.¹³⁰ Masiello has shown the Commission some gasoline charge slips which are dated March 16 and 17, 1971, signed by Masiello, and imprinted as being from gas stations in Massachusetts.¹³¹ Thus, Masiello has some support for his statement that he was not present at the March 17, 1971 meeting in Florida with Mansueto and Kelly.

According to Mansueto's testimony at the DiCarlo-MacKenzie trial, Kelly said at the March 17, 1971 meeting that MBM could obtain favorable treatment from DiCarlo if MBM would come up with \$100,000 to help DiCarlo put his children through school.¹³² Mansueto testified that he was shocked at this demand/request, and that he telephoned McKee, who rejected the demand/request out of hand.¹³³ Mansueto further testified¹³⁴ that rather than break off relations with Kelly, he temporized, saying: "For Chrissake, ... I can't do this by myself." Mansueto also testified¹³⁵ that he told Kelly words to the effect: "Holy Moses, Jim, we are not a bottomless barrel."

Mansueto testified, in addition, that Kelly threw in a request for himself -- namely, that MBM hire Kelly as an accountant¹³⁶ (as the Masiello firm had done).¹³⁷

DiCarlo, in interviews with Commission staff, has insisted that he had no discussions with Kelly about getting money from MBM in regard to the proposed legislative investigation.¹³⁸ Indeed, DiCarlo has suggested that if Kelly made

¹³⁰ Mansueto testimony, 9 DiC 2/4/77 at 46; P.A. 5/23/78 at 66; William Masiello testimony, Sp. Comm. 6/24/80 at 39-41; Kelly testimony, P.A. 5/12/78 at 84.

¹³¹ William Masiello testimony, Special Commission 6/24/80 at 39-41.

¹³² Mansueto testimony, 9 DiC 2/4/77 at 47-48.

¹³³ Id. at 48-49.

¹³⁴ Id. at 48.

¹³⁵ Id. at 49.

¹³⁶ Id.

¹³⁷ William Masiello testimony, Sp. Comm. 5/13/80 at 56.

¹³⁸ DiCarlo 12/8/78 interview.

any demand or request for \$100,000 on March 17, 1971, Kelly was doing so on his own account, not DiCarlo's.¹³⁹

It should be noted in this connection that Kelly not only had the power on his own to scuttle the DiCarlo-Sirianni-Hogan legislation (which was in Kelly's committee) on March 17, 1971, but that Kelly also was being asked by MBM to push for passage of a bill that Kelly had filed in October 1970 which would have assisted MBM in its efforts to win a large contract at UMass/Worcester.¹⁴⁰

In any event, Mansueto has testified that he saw Kelly about a week after the March 17, 1971 meeting,¹⁴¹ and MBM records reveal short telephone calls to Kelly's State House office on March 23 and March 24, 1971.¹⁴² Whatever negotiations there may have been apparently broke down; on March 25, 1971 Kelly's committee issued a report calling for adoption of the DiCarlo-Sirianni-Hogan order.¹⁴³ On March 29, 1971, the full State Senate adopted the order,¹⁴⁴ completing the legislative process to establish a special committee to investigate MBM's UMass/Boston contract.¹⁴⁵

The Selection of Members for the Committee

With the legislation having been passed to establish a special legislative committee to investigate MBM's UMass/Boston contract, MBM turned its attention to the selection of members for the committee. Peabody had already spoken with Kevin Harrington, according to Peabody's testimony.¹⁴⁶ As Senate President, Harrington was to name the three Senate members of the

¹³⁹ Id.

¹⁴⁰ See discussion of MBM's attempt to win the project management contract at UMass/Worcester in Appendix C.

¹⁴¹ Manuseto testimony, P.A. 5/23/78 at 71.

¹⁴² MBM telephone records.

¹⁴³ Journal of the Senate, 1971, at 904.

¹⁴⁴ Id. at 915.

¹⁴⁵ Although the wording of the order had been changed, as discussed above, the order still clearly called for an investigation of MBM's UMass/Boston contract. MBM simply was not mentioned by name.

¹⁴⁶ Peabody testimony, 8 DiC 2/3/77 at 95-96.

special committee.¹⁴⁷ On March 31, 1971, Harrington appointed DiCarlo as Senate Chairman of the committee, and Harrington also named George Kenneally and Robert Cawley to the committee.¹⁴⁸

All three senators appointed by Harrington to the committee were Democrats. The failure to appoint even a single Republican was criticized as unprecedented by the Republicans, who immediately started pressing for legislation to require that the committee be enlarged to include a fourth senate member who would have to be a Republican.¹⁴⁹ The proposed order to accomplish this change died quietly in the House.

As to the three Democratic senators who were chosen, DiCarlo had, of course, sponsored the order creating the committee. DiCarlo, however, was on the threshold of political power, and his rise was dependent upon Kevin Harrington.¹⁵⁰ George Kenneally had been Peabody's Suffolk County Coordinator in Peabody's 1964 gubernatorial primary campaign.¹⁵¹ During the course of the DiCarlo committee's investigation, Peabody wrote the following in a note to himself: "Kenneally last night - Primary goal to protect EP."¹⁵² (Note: "EP" is how Endicott Peabody was often referred to in internal Peabody law firm memoranda.) Robert Cawley also was friendly to Peabody.¹⁵³

¹⁴⁷ House Order 5086

¹⁴⁸ Journal of the Senate, 1971, at 940-941.

¹⁴⁹ Proposed order filed by Senator David Locke, adopted by the Senate April 1, 1971. Journal of the Senate, 1971, at 947.

¹⁵⁰ DiCarlo 12/8/78 interview, at 1.

¹⁵¹ Notes of 10/25/79 interview of George V. Kenneally by Special Commission staff, at 1-2.

¹⁵² Handwritten memorandum dated 5/12 [1971] of Endicott Peabody, concerning what appears to have been a telephone conversation with Jack Thomas.

¹⁵³ Kenneally 10/25/79 interview at 3. Cawley stated that he had only a political relationship with Peabody. Notes of 10/23/79 interview of Robert L. Cawley by Special Commission staff, at 1.

The House members of the special committee to investigate MBM's UMass/Boston contract had not yet been appointed. Their selection was the prerogative of House Speaker David M. Bartley, whose role in regard to the Fallon bill a year earlier has been discussed above.

In an interview with Commission staff, Bartley said that Peabody had contacted Bartley in February 1971 to try to persuade Bartley to quash the DiCarlo-Sirianni-Hogan legislation.¹⁵⁴ Peabody's MBM billing records indicate a meeting with Bartley on February 12, 1971¹⁵⁵ -- the day after the DiCarlo-Sirianni-Hogan legislation had been filed. And a Wendell Woodman news article published on February 22, 1971 reported that Bartley was "under tremendous pressure [from Peabody] to scuttle [the] investigation."¹⁵⁶ Peabody, in testimony before the Commission, acknowledged contacting Bartley in [February] 1971 but said that their conversation was about changing the wording of the DiCarlo-Sirianni-Hogan legislation to remove MBM's name.¹⁵⁷

In any event, when the time came for Bartley to name the House members to the committee, Bartley took Peabody's concerns into account, according to Bartley.¹⁵⁸ In particular, Bartley has said that he chose Representative Paul Menton because Menton -- whom Bartley described as a lawyer and former FBI man of integrity -- was friendly to Peabody.¹⁵⁹ By choosing Menton, Bartley felt that Peabody's client (MBM) would be assured of getting "a fair shake."¹⁶⁰ Bartley believes that Peabody may have specifically asked that Menton be

¹⁵⁴ Notes of 10/16/79 interview of David M. Bartley by Special Commission staff, at 4.

¹⁵⁵ Peabody law firm MBM tub card XV, entry for 2/12/71.

¹⁵⁶ Wendell H. Woodman, "Probe Order Is Stalled", New England News Service release dated February 19, 1971, at 1.

¹⁵⁷ Peabody testimony, Sp. Comm. 6/19/80 at 175-176, 181-182.

¹⁵⁸ Bartley 10/16/79 interview at 4.

¹⁵⁹ Id. at 4-5.

¹⁶⁰ Id. at 5.

appointed, or that Peabody may have asked for "a friend on the committee, for fairness," or that Menton may have asked to be appointed, as Peabody's friend.¹⁶¹ Similarly, Bartley has said that his decision not to appoint William Hogan to the committee -- even though Hogan had been one of the original signers of the order -- may have been made at Peabody's request.¹⁶² In testimony to the Commission, Peabody said that he did not discuss the membership of the committee with Bartley. Peabody's contemporaneous records indicate interest in the membership, however, although they refer to Bartley's deputy (Rep. Paul Murphy) rather than to Bartley.¹⁶³ Although Bartley, unlike Harrington, did appoint one Republican to the committee, the Republican chosen -- J. Hilary Rockett (R- Marblehead) -- was closer to the Democrats on many matters than to the Republicans, according to Rockett.¹⁶⁴ The other House members were Sirianni, who had co-signed the original order and was named House chairman;¹⁶⁵ J. Laurence Golden (D-Framingham); and James Hart (D-Dorchester).¹⁶⁶

MBM's Purchase of Tickets
for House Speaker Bartley's "Brunch"

Bartley announced his selection of House members for the DiCarlo-Sirianni Committee on April 13, 1971. As it happened, Bartley was having a testimonial "brunch" on April 25, 1971. According to a newspaper article from April 16,

¹⁶¹ Id.

¹⁶² Id. at 4-5.

¹⁶³ Peabody testimony, Sp. Comm. 6/19/80 at 174-175. See also memorandum dated April 5, 1971, from Gov. [Endicott] to Peabody to Mr. [Jeremiah D.] Lambert, "Subject: MBM"; letter dated April 13, 1971 from Endicott Peabody to Gerald McKee, Jr.

¹⁶⁴ Notes of 10/17/79 interview of J. Hilary Rockett (R-Marblehead) -- by Special Commission staff, at 1.

¹⁶⁵ Journal of the House of Representatives, 1971 at 1218.

¹⁶⁶ Id.

1971, most of the \$100 tickets to the "Brunch for Bartley" were being purchased by "State House lobbyists."¹⁶⁷ It is impossible to verify that report. No records were kept to identify the purchasers of the more than \$100,000 of tickets sold for the "brunch" because, according to Bartley, the law did not require such records for "private testimonials."¹⁶⁸ Bartley told Commission staff that perhaps 25 or 30 gifts of \$1,000 were made to this testimonial.¹⁶⁹ Bartley did not recall one of those gifts as having come from MBM or Endicott Peabody.¹⁷⁰ Peabody, however, has testified that he paid \$1,000 for tickets to the "Bartley Brunch" -- and that the money came from MBM.¹⁷¹

MBM learned of the "Bartley Brunch" from Peabody.¹⁷² Peabody's files contain a handwritten note from Peabody to his partner Jeremiah Lambert, to which was attached the April 16, 1971 newspaper article about the "Brunch for Bartley." The note from Peabody to Lambert said:

"Jerry [Lambert] - I will need to 'hear' from Tony [Mansueto] or Jerry [McKee] about this - this week. I wrote Tony but no call. - Chub." [Emphasis in original.]

MBM did come up with \$1,000 for the "Bartley Brunch," and the procedure used to pay for the tickets was described in a contemporaneous memorandum from MBM's Boston Regional Manager Jack Thomas to McKee.¹⁷³ The memorandum, dated April 30, 1971 and labelled "CONFIDENTIAL," is on the "Subject: Speaker Bartley's Brunch." The memorandum says:

"As you know, we agreed to purchase ten tickets to a recent fund-raising affair for the Speaker of the House of Representatives of Massachusetts at a price of \$100.00 per

¹⁶⁷ Thomas C. Gallagher, "A 'Brunch' for Bartley," Boston Herald Traveler, April 16, 1971, at 16.

¹⁶⁸ Bartley 10/16/79 interview at 5-6.

¹⁶⁹ Id. at 6.

¹⁷⁰ Id.

¹⁷¹ Peabody testimony, Special Commission 6/19/80 at 187-179, 193-194.

¹⁷² Id. at 187; written statement dated June 12, 1980 of Jack S. Thomas executed in London, England, at 2.

¹⁷³ "Confidential" memorandum dated April 30, 1971 from Jack S. Thomas to G. McKee, Jr.

ticket. In anticipation of this, I prepared a check (#3235) in the amount of \$1,000.00 and handed this check to Endicott Peabody with the Payee not indicated.

"I understand from Chub Peabody that the fund raisers preferred to have one of his checks. He, therefore, deposited our check in his own account, and purchased the tickets with his own check. I believe that our check was made payable to 'cash' prior to deposit.

"We will carry this \$1,000.00 as a special advance to me on our records."

The check was in fact made out to cash,¹⁷⁴ deposited into Peabody's personal bank account in Washington, D.C.,¹⁷⁵ and charged on MBM's books as a "special advance" to Thomas.¹⁷⁶ Because of a loophole in the law as to "private testimonials," this procedure -- which would have been illegal for a "political contribution" -- may have been legal for the "Bartley brunch." When asked why this procedure was employed, Peabody testified:¹⁷⁷

"Well, I ha[d] been representing MBM by that time for two years in Boston. I was well known in the State House as their representative. I believe that were the check to come from me directly to Bartley that I could do more on some future occasion for MBM should that occasion occur. In reflection I don't think it made a particular world of difference, I think what was important was the \$1,000.00 check."

The Investigation
Conducted by the
DiCarlo-Sirianni Committee

In testimony before the Commission in 1980,¹⁷⁸ Joseph DiCarlo defended the performance and final report of the DiCarlo-Sirianni Committee:

"The report that was filed by me was an honest, innocent report as such, as a matter of fact, Mr. Chairman, ... I wish to refute, negate, and outright deny that that report was a whitewash as it so often has been labelled."

DiCarlo explained:¹⁷⁹

¹⁷⁴ MBM-Boston check #3235 dated April 21, 1970 payable to cash.

¹⁷⁵ Affidavit dated April 19, 1978 executed by Endicott Peabody in Washington, D.C., at 2-3.

¹⁷⁶ See Thomas 4/30/71 confidential memorandum to McKee.

¹⁷⁷ Peabody testimony, Special Commission 6/19/80 at 189.

¹⁷⁸ DiCarlo testimony, Special Commission 4/7/80 at 10.

¹⁷⁹ Id. at 11.

At the time of the [DiCarlo-Sirianni] Committee's investigation, I had no handle, no handle whatsoever on the subject matter of the contract or its performance with regard to MBM. We were without staff, without legal aid, and with[out] expertise of any kind at all."

DiCarlo maintained that the DiCarlo-Sirianni Committee was incapable of doing a thorough investigation of MBM, that the DiCarlo-Sirianni Committee was incapable of writing a report that could have threatened MBM, and that the thousands of dollars of cash that DiCarlo accepted from MBM constituted merely campaign contributions, willingly made by a generous firm to an honest state senator.¹⁸⁰

The Commission, however, received evidence inconsistent with DiCarlo's account. The evidence indicates that substantial information critical of MBM and of the MBM-UMass/Boston contract was available to DiCarlo, that the first draft of the DiCarlo-Sirianni Committee report was detrimental to MBM, and that the report was watered down as a result of MBM's agreement to give cash to DiCarlo. The information available to the DiCarlo-Sirianni Committee is considered in the present section, and the DiCarlo-Sirianni Committee's report is discussed in a later section.

There were at least five sources that DiCarlo could have mined for information critical of MBM and of MBM's UMass/Boston contract. First, there were BBC employees such as James J. Cusack who were unhappy with the general concept of an outside project manager for state projects and with the specific contract and performance involving MBM. Cusack had taken his concerns to Representative Thomas Fallon in 1970,¹⁸¹ had written memoranda to BBC Director Poittrast criticizing MBM's performance,¹⁸² and had discussed the failings of MBM and the MBM-UMass/Boston contract with Woodman, McDermott, and Sirianni.¹⁸³ Criticisms expressed by Cusack might well have been taken seriously, since Cusack -- as the BBC's Project Engineer for the UMass/Boston

¹⁸⁰ Id. at 7, 10-12.

¹⁸¹ See discussion of the Fallon bill at the beginning of the present chapter.

¹⁸² See, e.g., memorandum dated February 1, 1971 from James J. Cusack to Walter J. Poittrast and others, enclosing a copy of MBM's UMass/Boston Status Report No. 16. See also Thomas testimony, 9 M/M 2/23/79 at 50-51.

¹⁸³ Sirianni testimony, 17 DiC 2/16/77 at 35; P.A. 3/1/578 at 88-94.

project -- was in a position to have first-hand knowledge of MBM's performance. Moreover, Cusack was widely regarded as a skilled and knowledgeable BBC employee, having been recommended for the BBC Directorship by many individuals in the construction field and in government, including DiCarlo's mentor, Kevin Harrington.¹⁸⁴

A second source of presumably informed criticism was a disgruntled MBM employee named Stanley Davis. Davis had been hired as manager of MBM's New York office,¹⁸⁵ but Davis and MBM had decided upon a parting of ways.¹⁸⁶ When Davis learned of the DiCarlo-Sirianni investigation of MBM, Davis telephoned DiCarlo to arrange a meeting to assist in DiCarlo's investigation of MBM.¹⁸⁷ Davis met with DiCarlo in the State House early in May of 1971.¹⁸⁸ According to Davis, DiCarlo took Davis to an attic-like area under the dome of the State House so that they could converse in privacy.¹⁸⁹ Davis says that he spent several hours discussing the MBM-UMass/Boston contract with DiCarlo, and that Davis left with DiCarlo a heavily annotated copy of the contract, replete with specific criticisms.¹⁹⁰ Moreover, Davis has testified that he had information which suggested that MBM may have been engaged in double-billing.¹⁹¹ According to Davis, DiCarlo seemed sincerely intent on conducting a serious investigation of MBM and of overturning MBM's UMass/Boston contract.¹⁹² DiCarlo, in testimony before the Commission,¹⁹³ admitted that he had met with Davis but

184 Letter dated June 11, 1969 from Kevin B. Harrington to A & F Commissioner Donald R. Dwight, recommending James J. Cusack for the position of BBC Director.

185 Davis testimony, Sp. Comm. 5/29/80 at 5.

186 Id. at 6.

187 Id. at 14.

188 Id.

189 Id. at 14-15.

190 Id. at 15.

191 Id. at 6-7.

192 Id. at 15.

193 DiCarlo testimony, Special Commission 6/3/80 at 108.

said that he could not recall what transpired during his May 1971 meeting with Davis:

"I could not describe it and the only way that my memory tells me that I had a meeting with him, again, is a result of what I read the other day [in the newspaper] of his testimony here before this Commission."

A third source of information was one of the members of the DiCarlo-Sirianni Committee: Representative J. Laurence Golden. Golden had asked to be appointed to the committee because a friend who was in the construction field had urged Golden to apply for membership on the committee.¹⁹⁴ The friend, Walter Sullivan, had told Golden that MBM was engaging in unethical practices with regard to awarding certain subcontracts on the UMass/Boston project.¹⁹⁵ Sullivan provided Golden with specific criticisms which Golden shared with the DiCarlo-Sirianni Committee¹⁹⁶ and with the press.¹⁹⁷

A fourth source was State Auditor Thaddeus Buczko. On March 23, 1971, Buczko had filed an audit report which criticized of MBM's UMass/Boston contract.¹⁹⁸ According to the analysis of the contract by the State Auditor's office --¹⁹⁹

"[t]he Department of the State Auditor is concerned that the agreement between the Bureau of Building Construction and McKee, Berger and Mansueto, Inc. is an open end agreement that in addition to the fixed fee of 1.53% the Bureau will be billed for all salary expenses plus 20% and reimbursement at actual cost plus 5% for such subcontracts as McKee, Berger and Mansueto, Inc. may be required to enter into under Section N with no apparent financial limit on these additional costs. It is also not clear whether the required consultants and/or subcontractors under Section N would be hired without the prior approval of the Bureau of Building Construction.

194 Testimony of J. Laurence Golden, Special Commission, 5/29/80 at 4-6.

195 Id. at 4-8.

196 Id. at 10-13.

197 See Wendell H. Woodman, "State House Report: Golden hours coming," Marlborough Enterprise - Sun, June 9, 1971; Thomas C. Gallagher, "Job Award under Fire," Boston Herald Traveler, June 15, 1971.

198 Office of the State Auditor, Report on the Examination of the Accounts of the Bureau of Building Construction from July 1, 1969 to July 1, 1970, No. 71-S-2.

199 Id. at 18-18a.

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 "The Department of the State Auditor also wishes to point out that the work assigned to McKee, Berger and Mansueto, Inc. is the type of work that the Bureau was created to perform. It would appear that the [staff of the] Bureau of Building Construction should have been increased to perform this work and to bring their regular work to a more current basis. The costs of such an expansion would be considerably less than the cost of the existing contract with this private corporation."

Buczko appeared before the DiCarlo-Sirianni Committee on July 29, 1971 and reiterated his criticisms.²⁰⁰

A fifth possible source was UMass/Boston itself. The UMass/Boston planning and development director, Francis E. O'Brien, Jr., was concerned that the project not be sidetracked by any type of delay,²⁰¹ but he was also critical of MBM's performance in certain respects.²⁰²

Not only were these sources of information not tapped fully, but the DiCarlo-Sirianni Committee rejected the suggestion of one of its members -- Golden -- that the very award of the contract to MBM be investigated.²⁰³ Paul Menton has told Commission staff that Golden wanted to look into why MBM was selected for the UMass/Boston project management contract, but that the other members of the DiCarlo-Sirianni Committee said that the only proper question for their review was the alleged open-endedness of MBM's contract.²⁰⁴ Golden testified that he agreed with the decision not to investigate how MBM won the contract and instead to look only at the legality of the terms of the contract, because it was pointed out to him that the terms of the order establishing the DiCarlo-Sirianni Committee permitted only such a narrow investigation.²⁰⁵

200 Statement by State Auditor Thaddeus Buczko at the July 29, 1971 public hearing of the DiCarlo-Sirianni Committee, in House No. 5006, Report of the Joint Special Committee [DiCarlo-Sirianni Committee] Relative to the Construction of the University of Massachusetts, Boston at Columbia Point, dated January 10, 1971 [sic; should say 1972] at 15-17.

201 O'Brien 5/15/79 interview at 5-7. See also discussion in Chapter IV supra.

202 See discussion in Chapter VI supra.

203 Golden testimony, Special Commission 5/29/80 at 12-16.

204 Notes of 10/18/79 interview of Paul C. Menton by Special Commission staff, at 2.

205 Golden testimony, Special Commission 5/29/80 at 12-16.

The terms of the order,²⁰⁶ however, were quite broad, "authoriz[ing] and direct[ing]" the DiCarlo-Sirianni Committee to

"investigate and study all aspects of the contract ..., the necessity for such a contract, the total amount to be received by the consultant and contractor under the terms of said contract, the experience of such firm in handling this large a project, and other such matters relative thereto which the committee deems relevant and proper."

The DiCarlo-Sirianni Committee's decision to have a narrowly-focused investigation apparently was not made until sometime after the committee had begun its hearings.²⁰⁷

Although the committee was meeting in executive session,²⁰⁸ MBM was learning about what was going on through Peabody, who in turn was receiving information from such sources as Deputy A&F Commissioner Zabriskie, BBC official Kussman, Senator Kenneally, and Representative Menton, according to contemporaneous documents.²⁰⁹ Information was also being obtained by the Dowd firm.²¹⁰

On the basis of the information from these sources, there appeared -- at least in May and June of 1971 -- to be reasons for MBM to be concerned about the DiCarlo-Sirianni Committee's work. For example, Peabody wrote notes, dated May 18, 1971, which appear to reflect information that he obtained from Zabriskie about the DiCarlo-Sirianni Committee's May 18, 1971 meeting:²¹¹

"Quite a meeting.

"Pointed questions -- Professional backgr[ound] of Thomas + others who signed the [contract].

. . . .

206 House Order 5086.

207 See news articles from June 1971 about Golden, cited above.

208 DiCarlo-Sirianni Committee Report, at 8-9.

209 See, e.g., memorandum dated 5/18 [1971] headed "MBM, Zabriskie," handwritten by Endicott Peabody; memorandum undated [but probably 5/18/71] headed "Walter Poitras and Kussman," handwritten by Endicott Peabody; letter dated May 20, 1971 from Jeremiah D. Lambert to Gerald J. [sic] McKee, Jr.

210 See, e.g., Report on the Session of the Special Committee [DiCarlo-Sirianni Committee] Investigating U. Mass. Boston - held at Room 480, State House, May 18, 1971, identified by Roger Dowd as having been prepared by an employee of the Dowd agency; notes of 4/23/80 interview of Roger Dowd by Special Commission staff, at 3.

211 Peabody 5/18 [1971] memorandum headed "MBM - Zabriskie."

"This firm [MBM] tried to go on board. Refiled 3 times. Questioned because of assets available. B[an]k[rup]tcy. What to sell.

. . . .

"Sirianni loaded for bear...."

The mention of "board" probably referred to MBM's three unsuccessful attempts in 1969 -- right before winning the UMass/Boston job -- to "go public."²¹² (The New York Stock Exchange is often referred to as "the Big Board.")

The DiCarlo-Sirianni Committee held a public hearing on July 29, 1971.²¹³ Anticipating that the July 29, 1971 session would be the committee's last hearing,²¹⁴ Jeremiah Lambert wrote a memorandum on July 27, 1971 to Peabody,²¹⁵ which said, in part, that

"Jerry [McKee] agrees that Phase II is critically important and wishes, of course, to avoid je[o]p[a]rdizing its award to MBM through any adverse investigative committee findings or pronouncements. In this connection, he also suggested the possibility that a friendly committee member might be asked to comment individually as to MBM's performance or, what is the same thing, the BBC's wisdom in employing the project manager concept. This would tie in with the newspaper publicity envisaged, mentioned above."

The last sentence quoted refers to previous discussion in the memorandum of MBM's attempts to obtain favorable newspaper coverage.

In what may have been an attempt to avoid another unfavorable newspaper article, Endicott Peabody met on July 28, 1971 with Wendell Woodman²¹⁶ -- whose articles in February 1971 had led to the DiCarlo-Sirianni Committee. Peabody's friend Edward Carroll set up the meeting²¹⁷ and was also present,²¹⁸ but

²¹² See discussion in Chapter II supra.

²¹³ DiCarlo-Sirianni Committee Report, at 9.

²¹⁴ See letter dated July 27, 1971 from Jeremiah D. Lambert to Gerald J. [sic] McKee, Jr.

²¹⁵ Memorandum dated July 27, 1971 from J.D.L. [Jeremiah D. Lambert] to E.P. [Endicott Peabody].

²¹⁶ Peabody daily office record, 7/28/71; Peabody law firm MBM tub card 25, entry for 7/28/71.

²¹⁷ Notes of 2/25/80 interview of Edward C. Carroll by Special Commission staff, at 1.

²¹⁸ Id.

Carroll says that he walked away from the table when Peabody and Woodman began talking.²¹⁹ According to Woodman, Peabody and Dowd had been engaging in a counter-offensive in reaction to Woodman's articles.²²⁰ Woodman claims that their efforts caused Woodman to have his column cancelled in dozens of newspapers around the state.²²¹ Notwithstanding the July 28, 1971 meeting between Peabody and Woodman, Woodman syndicated another article that was unfavorable for MBM on July 30, 1971.²²²

There appears to be no official transcript of the July 29, 1971 DiCarlo-Sirianni Committee public hearing. However, the Peabody firm prepared a memorandum for files, dated July 30, 1971, which appears to be a partial quasi-transcript.²²³ Both that document and Woodman's July 30, 1971 article about the session indicate that Auditor Buczko remained critical of MBM's UMass/Boston contract.²²⁴ For example, according to Woodman's article --

"Buczko was the most critical of the contract. He called it 'dangerous,' and accused the BBC of 'abrogating its powers and responsibilities.'"

The Peabody firm document²²⁵ showed Buczko as recommending that the state

"[m]ake sure that the people entrusted with the responsibility are well versed in the field. Must safeguard to insure the taxpayers' rights are protected."

The Peabody firm document then commented: "This was a direct slam at MBM."

219 Id.

220 Woodman 10/11/79 interview.

221 Id. See "List of newspapers ... that cancelled their subscription[s] [to New England News Service] after February 1971," Woodman Research Dossier on MBM - UMass Contract.

222 "State Auditor blasts management contract," New England News Service release, July 30, 1971.

223 Memorandum for files dated July 30, 1971, on the letterhead of Peabody law firm.

224 "State Auditor blasts management contract," at 1.

225 Peabody law firm 7/30/71 memorandum for files.

The Peabody firm document reflected Rep. Sirianni criticizing the contract, although not MBM's performance:²²⁶

"Sirianni: What are we going to do with the contract we have? We are paying possibly two times on a flat rate plus 5%. I think the contract should be terminated. I don't have reason to say we don't have competent work. Evidently, the MBM performance is of a very high nature."

Woodman's article also reported that

"Rep. Sirianni termed the contract 'sloppy' and 'ridiculous' and suggested that it be terminated and renegotiated"

The Woodman article made no mention of DiCarlo's attitude, and the Peabody firm document recorded DiCarlo comments which are somewhat difficult to categorize as favorable or unfavorable toward MBM.²²⁷ The document does indicate that BBC official Kussman and A&F Commissioner Charles Shepard spoke in favor of the contract.²²⁸ McKee also defended the contract.²²⁹

The First Draft
of the DiCarlo-Sirianni
Committee Report

MBM was very concerned, over the next several months, about what the DiCarlo-Sirianni Committee's final report would say. It channeled some of this concern into early attempts to inspire favorable language from the committee.

By July 30, 1971 -- the day after the public hearing -- MBM had assisted Frederick Kussman of the BBC in preparing a draft²³⁰ of a letter that Kussman would send to the committee giving a further defense of the contract. By August 2, 1971, work was well underway on a brief that MBM would submit to the Committee,²³¹ and on August 6, 1971 Jeremiah Lambert sent the completed draft of the brief to

²²⁶ Id.

²²⁷ Some of the statements may have been a result of DiCarlo's simply repeating what a previous witness had said before DiCarlo asked his own question.

²²⁸ Peabody law firm 7/30/71 memorandum for files.

²²⁹ Id.

²³⁰ Memorandum dated July 30, 1971 from Jack S. Thomas to "Chub" [Endicott Peabody], and attachment, 8 page draft letter concerning contract 601, project U67-4#2A, signed by Frederick Kussman.

²³¹ Outline of brief on MBM, dated August 2, 1971.

McKee for his review.²³² Lambert enclosed, along with the draft brief, a copy of S. 75 -- the bill that Senator Kelly had introduced in October 1970 to permit the BBC to appoint temporary consultants to expedite projects.²³³ The bill was still pending in Kelly's Senate Ways & Means Committee, and Lambert wrote to McKee ²³⁴ that

"We believe this legislation is very important to MBM since it would appear to provide some real protection against a recurrence of the present investigative assault. We think the legislation should be pushed."

Lambert's comment coincided with Peabody's view, expressed in a handwritten note,²³⁵ that

"We should get on top of this bill + not just leave it to chance."

In a letter dated August 12, 1971, BBC official Frederick Kussman urged Senate President Harrington to push for passage of S. 75.²³⁶ Under a cover letter dated August 14, 1971, Endicott Peabody sent to Peabody's friend Edward Carroll a copy of Kussman's letter to Harrington about S. 75. Peabody wrote to Carroll:²³⁷

"I enclose a copy of a letter from Fred Kussman on Senate Bill 75 concerning which we talked on the telephone. Hope something can be done with it."

"I also enclose a copy of the brief which we filed with all members of the Committee on August 12. It is in very simple outline form, and can be helpful in the writing of the majority report. I much appreciate your interest."

Carroll has testified that he has no memory of doing anything specific with the

²³² Letter dated August 6, 1971, from Jeremiah D. Lambert to Gerald [J.] McKee, Jr.

²³³ See discussion of the Kelly bill in Appendix C.

²³⁴ Lambert 8/6/71 letter to McKee.

²³⁵ Memorandum, undated [but probably from August 6-10, 1971], handwritten by Endicott Peabody in his spiral steno pad.

²³⁶ Letter dated August 12, 1971 from Frederick J. Kussman to Senate President Kevin B. Harrington, advocating the passage of S. 75.

²³⁷ Letter dated August 14, 1971 from Endicott Peabody to Edward Carroll.

contents of that mailing,²³⁸ and Carroll has told Commission staff²³⁹ that he has no idea what Peabody meant when Peabody wrote "Hope something can be done with it;" "the brief ... can be helpful in the writing of the majority report;" and "I much appreciate your interest."

At the same time that BBC official Kussman -- with assistance from MBM -- was writing the letter under Kussman's own name to the DiCarlo-Sirianni Committee defending the contract that Kussman and Poitras had negotiated with MBM, and at the same time that Kussman was writing a letter under his own name to Senate President Harrington about S. 75 and making a copy of that letter available to MBM and/or MBM's attorney Peabody, Kussman was agreeing to perform another role -- that of secretly drafting the final report for the DiCarlo-Sirianni Committee, the report which would assess the contract that Kussman and BBC Director Poitras had negotiated with MBM. This information comes from testimony of Kussman, as well as from testimony of DiCarlo and William Masiello.

The testimony is that DiCarlo mentioned to his friend Masiello that DiCarlo was uncertain how to write a final report on MBM's contract and what to write in such a report²⁴⁰ -- and that Kussman mentioned to his friend Masiello that Kussman was concerned about DiCarlo embarrassing himself and the BBC by writing an insufficiently knowledgeable and informed report²⁴¹ -- and that Masiello then solved everyone's problem by arranging for Kussman to write the report secretly for DiCarlo.²⁴² In Masiello's view, the "everyone" included MBM, since Masiello has said that he told MBM Vice President Mansueto in mid-August 1971 that Masiello had arranged for Kussman to write the DiCarlo-Sirianni Committee report, and that Masiello asked MBM to show its gratitude by

²³⁸ Testimony of Edward [C.] Car[r]ol[l], P.A. 4/10/78 at 10-12, 17.

²³⁹ Carroll 2/25/80 interview at 1-3.

²⁴⁰ William Masiello testimony, Special Commission 6/24/80 at 43-44; DiCarlo testimony, Special Commission 6/3/80 at 111-112, 120.

²⁴¹ Kussman testimony, 20 DiC 2/2/77.

²⁴² William Masiello testimony, Special Commission 6/24/80 at 43-44.

giving Masiello some money for his assistance.²⁴³

Kussman has testified that he did not draft the DiCarlo-Sirianni Committee report during hours when Kussman was supposed to be working for the BBC. Instead, Kussman says that he wrote the report during his vacation, which occurred between mid-August 1971 and early September of 1971.²⁴⁴

When the FBI and United States Attorney's Office were preparing for the DiCarlo-MacKenzie trial in 1975 and 1976, they asked Kussman for any documents that he had that related to the case.²⁴⁵ He did not at that time give to them, or tell them about, a copy that he had retained of the draft report that he had prepared for the DiCarlo-Sirianni Committee.²⁴⁶ When Kussman appeared as a defense witness at the DiCarlo-MacKenzie trial and produced the copy of the draft report, the Assistant United States Attorney prosecuting the case indicated that he was upset that Kussman had not made the draft available previously to the Government.²⁴⁷ Since the Government had already rested its case before the draft became available and with the Government apparently not having been told that there had been such a draft,²⁴⁸ there was little emphasis upon the contents of the Kussman draft during the DiCarlo-MacKenzie trial.²⁴⁹ There is reason to believe that the document in question is in fact a copy of the original draft of the DiCarlo-Sirianni Committee report because, in addition to Kussman's testimony vouching that it is a copy of the original draft, there is

²⁴³ Id. at 44-45.

²⁴⁴ Kussman testimony, 20 DiC 2/22/77 at 139-140.

²⁴⁵ Id. at 148-149.

²⁴⁶ Id. at 149.

²⁴⁷ Bench conference, 20 DiC 2/22/77 at 52-55, 62-63.

²⁴⁸ See bench conference, 20 DiC 2/22/77 at 54.

²⁴⁹ See Kussman testimony, 20 DiC 2/22/77 at 135-149.

testimony by MBM salesman Martin Heyman²⁵⁰ that there was an early draft of the DiCarlo-Sirianni Committee report along the lines of the document in question.

This first draft of the DiCarlo-Sirianni Committee report by BBC official Kussman absolved the BBC of any wrongdoing in deciding to use an outside project management firm for UMass/Boston and in negotiating the contract with MBM.²⁵¹ But, although the draft found nothing to criticize with the BBC's behavior, it reached other conclusions that were highly detrimental to MBM. In particular, although it concluded that while the use of an outside project management firm may have been acceptable for the initial stages of Phase I of the UMass/Boston contract, it said that the proper policy for the rest of Phase I, for all of Phase II, and for all future state projects (with rare exceptions) would be to have project management functions performed exclusively by the BBC. The language on this point in the first draft of the DiCarlo-Sirianni Committee report (as prepared by Kussman) included the following:²⁵²

"We can find no previous history of an agency of the Commonwealth entering into a project management service contract for a project of the size of Columbia Point. That the Bureau made an apparent sound decision to employ experts to meet the construction timetable does not and should not be considered as a precedent for their continued use on this or any other project except in the most extenuating circumstances. The personnel growth of the Bureau has obviously not kept pace with the expanding capital outlay program of the Commonwealth. The expertise appears to be available at the Bureau of Building Construction to handle all save the most ambitious crash construction programs which are the exception and not the rule. The need to supplement the Bureau of Building Construction staff which was present in August of 1969 does not justify the continuation of consultant services beyond the present contract termination date of December 31, 1972.

. . .

"If section 8 of Chapter 898 of the Acts of 1969 is determined to be so restrictive as to prohibit the hiring of temporary employees from the ranks of our vast unemployed this committee strongly recommends the establishment of excess quota 03 positions so as to prepare now to have an orderly transition in December of 1972, from project management services to state employees services, under the direction of the unit employees

250 Heyman testimony, P.A. 3/6/78 at 56-60; P.A. 3/22/78 at 164-167, 169.

251 Typescript draft, Report of the Special Joint Committee to Investigate and Study a Consultant Service Contract, University of Massachusetts, Columbia Point Boston [Kussman draft], Defendant's Exhibit 55 at the DiCarlo-McKenzie trial and Introductory Exhibit 10, Special Commission 5/28/80 at 20.

252 Id. at 6, 8.

currently assigned from the Bureau of Building Construction home office to this project."

This draft was extremely unfavorable for MBM because, although no wrong-doing was cited, the Commonwealth was (in the draft) rejecting the very concept of the use of outside firms such as MBM to perform project management on state projects. Moreover, this draft would pose imminent financial harm to MBM since MBM was shortly to apply ²⁵³ for extensions of its UMass/Boston Phase I project management contract -- extensions worth more than \$1 million to MBM²⁵⁴ -- and since MBM was also about to apply²⁵⁵ for a contract for Phase II of the UMass/Boston project, which MBM regarded as potentially more lucrative even than MBM's Phase I contract.

253 Letter dated December 29, 1971 from Gerald McKee, Jr. to Walter J. Poitras, submitting a proposal for furnishing construction management services for Phase II of the UMass/Boston project.

254 See chart, "MBM Contracts for Project Management Services at UMass/Boston," introductory Exhibit 7, Sp. Comm. 5/28/80.

255 Letter dated December 29, 1971 from Gerald McKee, Jr. to Walter J. Poitras, requesting an extension of MBM's project management services beyond the present contract termination date of December 31, 1972.

The Intercession of
 Senator Ronald C. MacKenzie
 and the Changing of the
DiCarlo-Sirianni Committee Report

During the hiatus between the conclusion of the DiCarlo-Sirianni Committee hearings (on July 29, 1971) and the completion by Frederick Kussman of the first draft of the DiCarlo-Sirianni Committee report (on September 6, 1971, according to Kussman),²⁵⁶ MBM was in the process of acquiring its old competitor, Mauchly Construction Management, Inc. ("MCM").²⁵⁷ On August 30, 1971 MBM President McKee wrote to Endicott Peabody about the planned acquisition of MCM and about McKee's continuing concerns regarding the DiCarlo-Sirianni Committee:²⁵⁸

"Dear Chub:

"Much to my dismay, a state of peaceful quiet has not yet been reached in Boston on the Columbia Point project. Jack Thomas tells me that television crews were at the site last Thursday and that commentary, including an interview with Joseph DiCarlo, was featured on the 6:00 news. Apparently having exhausted the mileage in the absurd assertion that the contract was entirely profit, the forces of antagonism are now clamoring about the alleged impropriety. This suggests several things, all unpleasant:

- "1. That the committee report may question the legality of the contract and/or request a review of it by the attorney general or others.
- "2. That the forces motivating the recent problems with the press and with DiCarlo's committee are still operative.
- "3. That Senator DiCarlo still believes there is some advantage in a posture of criticism of us and our contract.

"Thomas has asked Roger Dowd [John C. Dowd's son] to see if he can find out why this snake -- though apparently scotched -- will not die.

"We have agreed to acquire Mauchly Construction Management Company who, as you know, have been building a reputation and obtaining work in Boston under the sponsorship primarily of Senator Mac[K]enzie. Daniel Shields, the president of Mauchly, on Tuesday and Wednesday of last week met with Dwight, Zabriskie, Poitrast, and (mirabile dictu)

²⁵⁶ Kussman testimony, 20 DiC 2/22/77 at 39.

²⁵⁷ See discussion in Chapter II supra.

²⁵⁸ Letter dated August 30, 1971 from Gerald McKee, Jr. to Endicott Peabody.

Senator DiCarlo. The Dwight and DiCarlo meetings were also attended by Senator Mac[K]enzie. The state representatives were very pleased with the prospective acqu[i]sition and I believe we should meet at an early date to discuss how the joint operation might obtain work, particularly project management or other services, at the Worcester Medical Center...."

McKee met with MacKenzie -- along with Shields and Thomas -- on September 10, 1971 in Boston, according to a contemporaneous calendar of Jack Thomas's.²⁵⁹ Thomas then sent a letter, dated September 15, 1971, to MacKenzie.²⁶⁰ The letter said, in part:

"Pursuant to our conversation last week, I am enclosing a copy of the statement issued to the Investigating Committee by Mr. Buczko, together with drafts of two (2) proposed responses which we have never issued. There is no plan at the present time to react openly to all of the misstatements contained in Mr. Buczko's report.

. . .

"My scheduled luncheon with a representative of the MBTA was postponed. However, I expect it to be rescheduled in the next few days, and I will keep you informed of developments in this regard."

The letter indicates that MBM intended to continue MCM's practice of utilizing MacKenzie to provide assistance in obtaining public contracts.²⁶¹ MCM had been paying finder's fees when outside assistance resulted in contracts being won.²⁶² The letter also suggests that MacKenzie was being made more familiar with MBM's position concerning the DiCarlo-Sirianni Committee investigation. (MacKenzie, of course, was not a member of the DiCarlo-Sirianni Committee.)

In the meantime, MBM was still relying upon Endicott Peabody in regard to the DiCarlo-Sirianni Committee. On September 20, 1971 Peabody sent a letter to his partner Lambert, with a copy to MBM Vice President Jack Thomas, reporting on work that Peabody had done for MBM in Boston on September 16 and 17, 1971.²⁶³ Peabody's letter said, in part:

²⁵⁹ Thomas desk calendar, at 9/10/71.

²⁶⁰ Letter dated September 15, 1971 from Jack S. Thomas to Ronald C. MacKenzie.

²⁶¹ See discussion in Chapter IV supra and in Chapter X infra.

²⁶² Harding testimony, Sp. Comm. 6/4/80 at 10-18; see Chapter X infra.

²⁶³ Memorandum dated September 20, 1971 from Endicott Peabody to Mr. [Jeremiah Lambert].

"I talked to Paul Menton [a member of the DiCarlo-Sirianni Committee] who states that the report will not be written until after prorogation October 15, but that one must be written before December 1st. He believes that it will discuss the Project Management contract as a new type of contract. Since this is so, and there has been no action for a year or two, the procedures should be reviewed before issuing another, based on our experience.

"He also felt that the University of Massachusetts might be interested in this report and we should activate them some way.

"He said Sirianni and Golden might give us some trouble in the report but only on the minority side. He stated that if the majority report indicated it was an open-ended contract, he would write a strong dissent. Senator Kenneally told Ed Carroll the same.

"It may be difficult for Senator DiCarlo to write a report passing around the compliments because he is very sensitive to Woodman's columns in his District."

Peabody sent a somewhat similar, but less detailed, letter directly to McKee about a week later.²⁶⁴

In late September or early October of 1971, perhaps shortly after receiving the letter from Peabody, McKee decided that MBM should turn to MacKenzie to see if he could learn more about the report that the DiCarlo-Sirianni Committee would be issuing.²⁶⁵ McKee asked MCM Vice President William Harding to speak to MacKenzie about the report.²⁶⁶ Harding did so,²⁶⁷ and MacKenzie soon reported back that he had read the draft report in DiCarlo's office and did not find "anything greatly harmful" to MBM.²⁶⁸ McKee then asked Harding to see if MacKenzie could borrow the draft report from DiCarlo so that MBM could look it over before it was issued.²⁶⁹ McKee kept the Peabody firm apprised of at least

264 Letter dated September 27, 1971 from Endicott Peabody to Gerald McKee, Jr.

265 McKee testimony, 4 DiC 1/27/77 at 60-61.

266 Id. at 73-74.

267 Id. at 74; Harding testimony, Sp. Comm. 6/4/80 at 36.

268 MacKenzie testimony, Sp. Comm. 5/28/80 at 22.

269 Harding testimony, Sp. Comm. 6/4/80 at 36

some of these developments, as indicated in a memorandum dated October 4, 1971 from Jeremiah Lambert to Endicott Peabody.²⁷⁰ The memorandum said:

"In a telephone conversation today Jerry McKee mentioned that it now appears that the committee report will be submitted to MBM in draft for final editing prior to its issuance. This report comes through Mauchly's political friend in Massachusetts and is somewhat different from the information you received from K[e]nneal[l]y.

"In view of this, it will probably be best not to spend time preparing a draft report. If you want to inquire further, you might do well to talk to Jack Thomas, although the best posture for the moment could instead be to do nothing until further notice."

Peabody's concern at this news was expressed in a handwritten note to Lambert:²⁷¹

"I sense a desire by the Mauchly group to move in and supplant us in dealing with the Commonwealth. I'm not persuaded this is for the good of the client. Maybe we should confer rather than let McKee evaluate the info he receives + make the decisions which could well be mistaken on this basis."

Lambert wrote another memorandum to Peabody dated October 8, 1971:²⁷²

"I spoke to Jerry McKee today. He believes that the [D]iCarlo committee report will be out soon and that MBM may have a chance to review it in draft. This information comes through M[a]cKenzie.

"Meanwhile, Jerry wants to know whether you have heard anything else from K[e]nneal[l]y. He will call you shortly to bring you up to date."

The first MBM \$5,000 check whose proceeds allegedly went in cash to MacKenzie (to split with DiCarlo) bore the date October 8, 1971.²⁷³ Anthony Mansueto's pocket calendar for October 8, 1971²⁷⁴ contains the entry:

"GM - RE MASS = WRONG."

Daniel Shields of MBM has recalled Mansueto as being upset about Gerald McKee's

²⁷⁰ Memorandum dated October 4, 1971, from "J.D.L." [Jeremiah D. Lambert] to "E.P." [Endicott Peabody].

²⁷¹ Handwritten note by Endicott Peabody on Lambert 10/4/71 memorandum to Peabody.

²⁷² Memorandum dated October 8, 1971, from "J.D.L." [Jeremiah D. Lambert] to "Chub" [Endicott Peabody].

²⁷³ MBM-Boston check #2699 dated October 8, 1971 for \$5,000 payable to cash.

²⁷⁴ Mansueto pocket diary, 10/8/71.

decision to pay MacKenzie and DiCarlo.²⁷⁵ It is possible that Mansueto's October 8, 1971 entry reflects that concern, although there is testimony that the decision to pay DiCarlo and MacKenzie was not made until later.²⁷⁶

In a handwritten note to Lambert dated October 10, 1971,²⁷⁷ Peabody wrote:

"I spoke to Thomas on Friday. He had heard some -- I'm from Missouri. Do you want M[a]cKenzie supplanting us?

"However, I did nothing on the memo for Kenneally -- which I think we should do -- at least in part.

"I think there is a need for someone in Boston to be watching out daily for MBM's interests and to keep in touch with me -- on legislation, on reports, etc...."

On October 13, 1971 MacKenzie borrowed the DiCarlo-Sirianni Committee draft report from DiCarlo.²⁷⁸ It is unclear whether MBM had seen a previous draft of the report. In interviews with the Commission, William Masiello said that he was not sure about it, but that he may have given a copy of the Kussman draft to Mansueto in August or September of 1971.²⁷⁹ Martin Heyman of MBM testified to the Post Audit Subcommittee that he recalled seeing an early, unfavorable draft on Jack Thomas's desk at MBM.²⁸⁰

In any event, MacKenzie took the report early on the morning of October 14, 1971 to the Sheraton Boston hotel, where McKee, Shields, and Harding were waiting.²⁸¹ McKee reviewed the draft and prepared several pages of suggested

²⁷⁵ Shields 2/24/80 interview at 4.

²⁷⁶ See discussion below.

²⁷⁷ Memorandum dated October 10, 1971 from "Chub" [Endicott Peabody] to "Jerry" [Jeremiah D. Lambert].

²⁷⁸ MacKenzie testimony, Sp. Comm. 5/28/80 at 24. DiCarlo testimony, So. Comm. 4/7/80 at 17.

²⁷⁹ William Masiello interview with Commission staff.

²⁸⁰ Heyman testimony, P.A. 3/22/78 at 164-166.

²⁸¹ MacKenzie testimony, Sp. Comm. 5/28/80 at 24-27; Shields testimony, Sp. Comm. 6/2/80 at 29-30; Harding testimony, Sp. Comm. 6/4/80 at 36-37; cf. Thomas testimony, 11 DiC 2/8/77 at 37-41.

changes and additions, which MacKenzie was then asked to submit to DiCarlo.²⁸²

According to MacKenzie and Harding, there was a discussion between them on October 14, 1971 -- after MacKenzie was handed the suggested changes -- about MBM's giving substantial "political contributions" to DiCarlo and MacKenzie in connection with having those changes made in the DiCarlo-Sirianni Committee report. Harding has testified that MacKenzie brought up the subject and that the amount mentioned was \$40,000.²⁸³ MacKenzie has testified that Harding made the overture and talked in terms of \$20,000.²⁸⁴ There is also, as discussed above, evidence suggesting that some sort of agreement, at least a preliminary agreement, may have been made as early as October 4 or October 8, 1971.

In any event, Harding and MacKenzie have both testified that MacKenzie said he would tell DiCarlo about MBM's willingness to make the "contributions" and that MacKenzie would find out whether DiCarlo would make the changes that MBM sought.²⁸⁵ MacKenzie and DiCarlo, in turn, have both testified that when MacKenzie showed the suggested changes to DiCarlo, DiCarlo felt that McKee had gone too far in asking for overly laudatory language about MBM.²⁸⁶ MacKenzie testified as follows about what next happened:²⁸⁷

"I did mention the fact to Senator DiCarlo [that] if it could be worked out and any of these things might be acceptable[,] MBM was willing to give us some considerable contribution[s] over the years. ...

"Senator DiCarlo asked me what [']considerable['] was and I repeated what Harding said, that should be at least \$20,000 in contributions.

. . .

282 MacKenzie testimony, Sp. Comm. 5/28/80 at 25-26.

283 Harding testimony, Sp. Comm. 6/4/80 at 39.

284 MacKenzie testimony, Sp. Comm. 5/28/80 at 27-28.

285 Harding testimony, Sp. Comm. 6/4/80 at 39-41; MacKenzie testimony, Sp. Comm. 5/28/80 at 27-29.

286 MacKenzie testimony, Sp. Comm. 5/28/80 at 29; DiCarlo testimony, Sp. Comm. 4/7/80 at 11-12, 30-31.

287 MacKenzie testimony, Sp. Comm. 5/28/80 at 30.

"Senator DiCarlo at the same time...said that any contributions that were received, he said it would be split fifty-fifty and he also said that hopefully I hope they understood it would be better to make them in cash."

Mackenzie reported back to Harding that the changes that McKee had proposed were too self-serving and that McKee would have to tone them down.²⁸⁸

Subsequent changes proposed by MBM were accepted by DiCarlo.²⁸⁹ Jack Thomas of MBM has testified that the second set of proposed changes (the set that DiCarlo accepted) was given to Harding later on the same day, October 14, 1971, for delivery to Mackenzie.²⁹⁰

Endicott Peabody has testified that MBM officials did not inform him of their decision to pay DiCarlo and Mackenzie for changes in the DiCarlo-Sirianni Committee report.²⁹¹ Peabody wrote a letter to McKee dated October 18, 1971²⁹² which said, in part:

"Following your telephone call last Friday [October 15, 1971], I was in touch with several parties in Massachusetts with respect to the proposed BBC budget which might eliminate consideration of a Project Manager for Phase II, and possibly for the balance of Phase I.

. . .

"...[R]egardless of what has been requested in the budget, the BBC will be perfectly free to hire a Project Manager for Phase II (with termination rights of course) as soon as it is necessary to do so. I had assurance from the Commissioner's Office which supervises the BBC on this point.

"What will be of great importance is the final report of the DiCarlo Committee. If the report recommends the termination of the Project Manager contract, the BBC might feel pressured to follow its recommendations. This is a marked switch from its earlier position when it insisted on its executive prerogatives. Accordingly, every effort should be made to insure that the report is favorable with regard to the continuation of a Project Manager contract at Columbia Point.

"In this area, I must voice my concern. As Counsel, we have been responsible for the legislative investigation and have been willing to exercise this responsibility. On your own initiative, while consulting us after the fact, you have

288 Id.

289 Id. at 31-32; DiCarlo testimony, Sp. Comm. 5/7/80 at 12, 30-31.

290 Thomas testimony, 11 DiC 2/8/77 at 41-43, 47-48.

291 Peabody testimony, Sp. Comm. 6/19/80 at 220-222.

292 Letter dated October 18, 1971 from Endicott Peabody to Gerald McKee, Jr., concerning MBM's new assistance in regard to the investigation of the DiCarlo-Siriani Committee.

brought new assistance into this area. We do not say it won't be effective; we do feel, however, that since the over-all direction of this matter appears to have been taken out of our hands, we cannot control events and results. An adverse result would distress us as much as it would distress you, in view of our time and commitment in this matter.

"I am going to be in Boston at the end of this week, and will be in consultation with you and Jack Thomas at that time."

Peabody came to Boston on October 22, 1971 and wrote the following report about his activities:²⁹³

"I met with Senator Kenneally and he practically assured me that the final report of the Committee would not contain any recommendation suggesting that the BBC take over the project management of Columbia Point, either for the remainder of Phase I or Phase II. Indeed, an effort is being made to obtain a positive recommendation.

"Ed Carroll informed me that he is sure that Senator DiCarlo will write a helpful report. From his prior and present relationship with Senator DiCarlo, we have a good basis for reliance on this statement.

"Jack Thomas accompanied me to the State House during which time I also talked to the Speaker and the Whip.

"Time is now of the essence since it would be desirable to execute Phase II as soon as the Legislature prorogues which is anticipated not later than November 15.

"Attached is a clipping picked up by Jack Thomas, which suggests that DiCarlo is going our way."

The attachment was a news article, which said, in part:²⁹⁴

"The bill to increase the funding authorization for the [Middlesex County] courthouse to some \$44.5 million is now in the Joint Rules Committee. It will not get out, says Rules Vice Chairman Sen. Joseph DiCarlo, D-Revere, without a provision for a consultant on the site to supervise the rest of the construction.

"DiCarlo pointed to the University of Massachusetts Columbia Point construction project as a prime example of cost savings by use of a consultant...."

The news article noted, however, that --

"The contract with McKee-Mansueto [sic] for consultant management services at UMass is, according to the state auditor's office an example of nearly everything a consultant's contract should not be.

"In fact, the contract came under such heavy criticism that it is now the subject of a legislative investigation...."

The article did not mention that the chairman of the committee investigating MBM's contract was DiCarlo.

²⁹³ Memorandum dated October 26, 1972 from Gov. [Endicott] Peabody to Mr. Jeremiah D. Lamber
 "Re: MBM - visit to State House in Boston, Friday, Oct. 22."

²⁹⁴ Shelly Cohen, "Do Consultants Save Money," otherwise unidentified newspaper article.

As discussed in Appendix D to the present Final Report, there is testimony that DiCarlo's advocacy of project management in general -- and of MBM in particular -- for the Middlesex County Courthouse was related to MBM's undertaking to make cash "contributions" to DiCarlo.²⁹⁵ That testimony has been denied by DiCarlo and McKee.²⁹⁶

As to the reference in Peabody's memorandum to Edward Carroll's "prior and present relationship with Senator DiCarlo," a memorandum dated October 31, 1971 by Peabody²⁹⁷ says:

"Ed Carroll is hiring Senator DiCarlo's brother as a Court Officer on the Boston Juvenile Court beginning Wednesday, November 3.

"He believes that the final report will be issued following proro[gue] and will be favorable...."

The DiCarlo-Sirianni Committee's final report was filed on November 10, 1971.²⁹⁸ The language that would have barred MBM from obtaining extension contracts on Phase I of UMass/Boston was deleted.²⁹⁹ MBM subsequently did obtain such contracts, pursuant to which MBM received more than \$1,000,000 in fees.³⁰⁰ The language that would have barred MBM from obtaining a Phase II project management contract was also eliminated.³⁰¹ MBM's continued pursuit of Phase II is discussed in Chapter V of the present Final Report.

²⁹⁵ Shields testimony, Sp. Comm. 6/2/80 at 78-85. See also discussion of MBM's attempts to win a project management contract for the Middlesex County Courthouse in Appendix D to this Final Report on MBM.

²⁹⁶ DiCarlo testimony, Sp. Comm. 6/3/80 at 98-102; McKee 11/20/79 interview.

²⁹⁷ Memorandum dated October 31, 1971 from Gov. [Endicott] Peabody to Mr. [Jeremiah D.] Lambert, "Subject: MBM."

²⁹⁸ Testimony of House of Representatives Clerk Wallace C. Mills, 20 DiC 2/22/77 at 180.

²⁹⁹ Typescript Report of the Special Joint Committee [DiCarlo-Sirianni Committee] to Investigate and Study a Consultant Service Contract, University of Massachusetts, Columbia Point, Boston, November [10], 1971, at 42, 50.

³⁰⁰ See chart entitled "MBM Contracts for Project Management Services at UMass/Boston," introduced as Exhibit 7, Sp. Comm. 5/28/80.

³⁰¹ Typescript 11/[10]/71 DiCarlo-Sirianni Committee Report, at 42, 50.

The new language submitted by MBM to DiCarlo (through MacKenzie) was included in the report.³⁰²

MBM had advance notice that the DiCarlo-Sirianni Committee's final report would be favorable. Jack Thomas obtained a copy of the "Recommendations" and "Conclusions" sections that would be included, and he sent copies to McKee and Peabody with the notations: "Rec'd from Ed Carroll 11/5/71;" "Looks like this will be it.!!!"³⁰³ Thomas then prepared a draft, dated November 9, 1971 -- the day before the DiCarlo-Sirianni Committee report was filed -- of a proposed letter to clients, quoting favorable language from the DiCarlo-Sirianni Committee report.³⁰⁴ Thomas sent a copy to Peabody, who wrote to Lambert:³⁰⁵

"Jerry - Let's talk - We did a job for them + Carroll did too!
- Chub."

Peabody's partner Lambert wrote a memorandum dated November 16, 1971 to McKee and Thomas:³⁰⁶

"Ed Carroll called yesterday. He confirmed that the final legislative committee report on the U/Mass consulting contract with MBM has now been issued and that it is favorable. He will send us a complete copy of the report shortly.

"Ed indicated that Wendell Woodman will probably write one last article on the matter before it is finally dropped.

"Ed expressed considerable optimism about (a) MBM's chances of getting Phase II on a consulting basis and (b) recovery of its claim. He suggested that Phase II would probably be awarded around the first of the year. The claim could then be pressed. He thought it could be submitted separately and need not become part of the Phase II price negotiations.

"The legislation which would have authorized BBC to add to its inhouse staff to meet Phase II requirements has been scuttled in committee, according to Carroll."

³⁰² Typescript 11/[10]/71 DiCarlo-Sirianni Committee Report, at 51-52.

³⁰³ Typescript document headed "Recommendations," with the notation, "Rec'd from Ed Carroll 11/5/71. JST [presumably Jack S. Thomas]."

³⁰⁴ See memorandum dated November 18, 1971 from Jack S. Thomas to Gerald McKee, Jr., with copies to Endicott Peabody and Roger Dowd.

³⁰⁵ Handwritten notation by Endicott Peabody on Thomas 11/18/71 memorandum to McKee.

³⁰⁶ Memorandum dated November 16, 1971 from "J.D.L." [Jeremiah D. Lambert] to Gerald McKee, Jr. and Jack S. Thomas, "Re: U/Mass Legislative Report."

The "claim" referred to above is probably the "delay claim" discussed in Appendix E to the present Final Report.

In testimony before the Post Audit Subcommittee in 1978, Edward Carroll denied that he had done work for Endicott Peabody, contacted people for Peabody, or communicated with Peabody regarding state business.³⁰⁷ Carroll testified that he did not recall contacting any of the members of the DiCarlo-Sirianni Committee in 1971 about the committee's investigation.³⁰⁸ In interviews with Commission staff in 1979 and 1980, Carroll stated that he never did anything specifically on MBM's behalf at the suggestion of Peabody or anyone else.³⁰⁹ When shown many of the documents discussed in this Final Report that mention Carroll, Carroll not only denied the substance of those reports but suggested that Peabody may have falsified such documents to justify larger fees for the Peabody firm.³¹⁰

On November 23, 1971 Peabody and Lambert met with McKee in New York to discuss the UMass/Boston project and other matters.³¹¹ In a letter to McKee reflecting on the meeting, Peabody wrote:³¹²

"I am glad you and I and Jerry Lambert had an opportunity to sit down in your office and discuss the Columbia Point contracts and other matters. While time was too short for a full discussion, I felt we came to a better meeting of the minds which will enable us to operate cooperatively for MBM's benefit in the future.

"As I told you, I completely support the idea of marshal[ing] all our assets and using them where necessary to achieve satisfactory solutions. What has dismayed me has been the failure to communicate directly any new moves which are being undertaken, and which may create a

³⁰⁷ Car[r]ol[l] testimony, P.A. 4/10/78 at 6-7.

³⁰⁸ Id. at 9-10. In a letter to the Post Audit Committee dated June 22, 1978, however, Carroll modified some of the categorical denials that he had made under oath. He admitted that "from time to time, I did keep [Peabody] advised as to some matters in the public field and check matters out for him about legislation." Letter dated June 22, 1978 from Edward Carroll to the Joint Legislative Committee on Post Audit and Oversight. He left others of his denials unchanged, such as his denial of contacting elected officials on behalf of Peabody to help Peabody in reference to any of Peabody's activities. Car[r]ol[l] testimony, P.A. 4/10/78 at 7.

³⁰⁹ Carroll 7/31/79 interview, at 2-5; 2/25/80 interview at 1-3.

³¹⁰ Carroll 7/31/79 interview at 2-3.

³¹¹ Peabody law firm MBM tub card 31, entries for 11/23/71.

³¹² Letter dated November 26, 1971 from Endicott Peabody to Gerald McKee, Jr.

competitive situation between ourselves and others. This is damaging and not conducive to a successful all-around solution. Accordingly, I would appreciate your keeping us informed of any moves you are making with respect to the Columbia Point contracts and other matters in which we are involved so that we can serve you efficiently and effectively."

As discussed below, Ronald MacKenzie has testified that he received the first payment from MBM in relation to the DiCarlo-Sirianni Committee report on January 20, 1972. Gerald McKee delivered the cash to MacKenzie who thereafter gave half to DiCarlo.

Endicott Peabody's MBM billing record for January 24, 1972 reads: "DiCarlo + Carroll + McKee."³¹³ Peabody testified at the Post Audit Subcommittee hearing in 1978,³¹⁴ and before the Commission in 1980,³¹⁵ that he did not learn that MBM was paying DiCarlo until after reading a newspaper article about the matter in 1975.

³¹³ Peabody daily office record, 1/24/72.

³¹⁴ Peabody testimony, P.A. 3/29/78 at 84-85.

³¹⁵ Peabody testimony, Sp. Comm. 6/19/80 at 213.

Payments Made by MBM
to DiCarlo and MacKenzie

In testimony before the Commission in 1980, former State Senators DiCarlo and MacKenzie admitted receiving thousands of dollars in cash from MBM.³¹⁹ The receipt of that money, as well as the payment of that money, was illegal.³²⁰

Except for one payment of a few hundred dollars that was made directly to DiCarlo, all of the MBM payments were made to MacKenzie, out of DiCarlo's presence. MacKenzie then met with DiCarlo in the State House to split the payments.

The payments to MacKenzie were made by Jack Thomas, William Harding, and Gerald McKee, Jr. of MBM. Thomas's detailed testimony about the amount, date, and method of delivery is corroborated fully by MacKenzie, as discussed below. Harding's testimony at the DiCarlo-MacKenzie trial about deliveries to MacKenzie was vague. Harding acknowledged delivering "envelopes" but he was not sure when he delivered them or what (at least in amount) was in them. That information was supplied through the testimony of McKee, who also testified about one payment that McKee made directly to MacKenzie.

McKee's testimony about amounts and dates on which MBM gave cash to Harding for MacKenzie has been disputed by MacKenzie, and Harding has testified to the Commission that his memory coincides more with MacKenzie's than with McKee's. Moreover, McKee's testimony about how much cash McKee himself handed to MacKenzie has been disputed by MacKenzie.

³¹⁹ DiCarlo testimony, Sp. Comm. 4/7/80 at 12-13, 24-27; Sp. Comm. 6/3/80 at 116. MacKenzie testimony, Sp. Comm. 5/28/80 at 40-41, 43-44, 49-51.

³²⁰ Receipt of the money not only violated the Hobbs Act, as discussed in Chapter VIII below and for which DiCarlo and MacKenzie were convicted, but it also violated state campaign finance laws. G.L. c.55 s.13. Payment of cash to politicians such as DiCarlo and MacKenzie is illegal, G.L. c.55 s.9. as is payment of such a large amount, G.L. c.55 s.7, as is payment by a corporation, G.L. c.55 s.8. It is illegal to have made the payments even if the payments were made in response to an extortion. G.L. c.55 s.11. The MBM witnesses were given Federal non-prosecution agreements in return for their testimony against DiCarlo and MacKenzie at the DiCarlo-MacKenzie trial. Letter dated May 2, 1975 from United States Attorney James N. Gabriel to Arnold Stream, concerning a non-prosecution agreement for Gerald R. [sic] McKee [Jr.]. Letter dated June 24, 1975 from United States Attorney James N. Gabriel to Arnold Stream, concerning a non-prosecution agreement for Anthony E. Mansueto and Jack S. Thomas.

It is difficult to fathom why MacKenzie would lie about the amount that he received from MBM. Unlike DiCarlo, whose admission of accepting MBM money was grudging and unspecific,³²¹ MacKenzie's testimony about the receipt, sharing, and personal use of the MBM cash was embarrassingly graphic. After years of denying even to his immediate family and closest friends that he had taken MBM cash,³²² what possible benefit could MacKenzie expect to receive from stating that he received only \$23,000 if the true amount had been \$40,000?

In any event, before a discussion the various alleged and admitted payments, it is important to emphasize that there is no dispute that MBM generated \$48,000 in cash between October 1971 and May 1972.³²³ The only question is what happened to the \$25,000 of that \$48,000 total that MacKenzie says did not go to him. There is evidence consistent with some or all of that \$25,000 in MBM cash having gone to other people for other illegal purposes. That evidence is summarized briefly in the following discussion of MBM cash generations from October 1971 through May 1972 that were alleged to have gone to MacKenzie to share with DiCarlo.

The October 1971 \$5000 Cash Generation. On October 8, 1971, MBM wire-transferred \$6,000 from its New York bank to its Boston bank.³²⁴ An MBM check dated October 8, 1971, and drawn on MBM's Boston bank account was made out to "Cash" in the amount of \$5,000.³²⁵ The check was cashed by MBM bookkeeper Sylvester Novelline,³²⁶ on instructions from MBM Regional Manager Jack Thomas.³²⁷ At the DiCarlo-MacKenzie trial, Jack Thomas testified that he kept

321 See DiCarlo testimony, Sp. Comm. 4/7/80 at 12, 14, 28.

322 MacKenzie had admitted taking small contributions, in the hundreds of dollars, from Harding on occasion. MacKenzie had insisted that none of those small payments were related in any way to the DiCarlo-Sirianni Committee.

323 \$40,000 of the \$48,000 was identified at the DiCarlo-MacKenzie trial and alleged to have gone to MacKenzie (to share with DiCarlo). The other \$8,000 was not mentioned in the DiCarlo-MacKenzie indictments but has since been alleged to have gone to MacKenzie (to share with DiCarlo). MBM generated additional cash in the same period which is not relevant to the present discussion.

324 McKee testimony, 4 DiC 1/27/77 at 80, 83, 93.

325 MBM-Boston check #2699 dated October 8, 1971, payable to cash.

326 Testimony of MBM Boston accountant Sylvester R. Novelline, 13 DiC 2/10/77 at 100.

327 Thomas testimony, 11 DiC 2/8/77 at 24.

the \$5,000 in cash in a sealed envelope locked in his office over the Columbus Day weekend and that he gave the envelope to Harding on Monday, October 11, 1971.³²⁸ McKee testified that the money was wire-transferred to Boston for Harding to give to MacKenzie.³²⁹ Harding testified that his expense report showed him to have met with MacKenzie on October 11, 1971 and that on various occasions, possibly but not definitely October 11, 1971, Harding handed envelopes to MacKenzie.³³⁰

In testimony before the Commission in 1980, however, Harding testified that his best recollection was that no money went to MacKenzie in relation to the DiCarlo-Sirianni Committee report until after the report was filed.³³¹ The report was not filed until November 10, 1971³³² and not printed until January 10, 1972.³³³

Ronald MacKenzie, in testimony before the Commission, said that he did not receive any money from MBM in relation to the DiCarlo-Sirianni Committee report in October 1971 or at any other time during 1971. Moreover, MacKenzie testified and offered other evidence that on October 11, 1971 he was in Dennisport, Massachusetts, at the summer home of Russell Dodds and was not in Boston to receive an envelope from Harding.³³⁴

There is evidence suggesting that the \$5,000 might have gone to Albert Manzi rather than to MacKenzie. In particular, Anthony Mansueto has testified that Manzi called him in October 1971 seeking a "contribution."³³⁵ The Commission does not have complete telephone records for that period. From the partial

³²⁸ Id. at 25-26.

³²⁹ McKee testimony, 4 DiC 1/27/77 at 83-84.

³³⁰ Harding testimony, 12B DiC 2/9/77 at 23-32.

³³¹ Harding testimony, Sp. Comm. 6/4/80 at 42.

³³² Mills testimony, 20 DiC 2/22/77 at 180.

³³³ House No. 5006, DiCarlo-Sirianni Committee Report, dated January 10, 1971 [i.e. 1972].

³³⁴ MacKenzie testimony, Sp. Comm. 5/28/80 at 54-55. See Defendants' Motion for a New Trial, United States v. DiCarlo, MacKenzie, Cr. Nos. 76-339-1, -2-S (D. Mass. November 9, 1977). Exhibit H, statement of Frank J. and Marion M. Kearns; Exhibit I, statement of Joan A. Dodds; Exhibit J, statement of Linda Dodds Murdock; Exhibit K, statement of David F. and Serena MacKenzie.

³³⁵ Mansueto testimony 2 M/M 2/13/79 at 71-72.

records available, the only documented telephone call between Manzi's office and MBM was on October 14, 1971.³³⁶ Mansueto says that he successfully put Manzi off on that occasion.

In sum, it is difficult to resolve what happened to the \$5,000 in cash that MBM generated in October 1971.

The November 1971 \$5000 Cash Generation. On November 19, 1971 an MBM check for \$5,000 was cashed.³³⁷ At the DiCarlo-MacKenzie trial, MBM President McKee testified that the money was given to William Harding to deliver to MacKenzie.³³⁸ Harding testified that his expense report listed a lunch with MacKenzie on November 20, 1971 and that Harding at various times gave envelopes to MacKenzie, with November 20, 1971 possibly being one of those times.³³⁹

MacKenzie, in testimony before the Commission, denied receiving MBM cash in November 1971.³⁴⁰ Further, MacKenzie provided documentary evidence indicating that he was in San Diego, California on November 20, 1971, not returning to Massachusetts until the following day.³⁴¹

There is evidence indicating that the \$5,000 in MBM cash from November 1971 may have gone to Albert Manzi rather than to MacKenzie. Anthony Mansueto has testified that he had a telephone conversation with Manzi on November 8, 1971 in which Manzi sought money from MBM.³⁴² Mansueto also has testified that Manzi's call was followed up by William Masiello who called Mansueto late in November or early in December of 1971 to press Manzi's demands.³⁴³ Mansueto's pocket

³³⁶ Massachusetts Turnpike Authority telephone records.

³³⁷ MBM check #2417 dated November 19, 1971 for \$5,000, payable to cash.

³³⁸ McKee testimony, 5 DiC 1/31/77 at 9.

³³⁹ Harding testimony, 12B DiC 2/9/77 at 34-40.

³⁴⁰ MacKenzie testimony, Sp. Comm. 5/28/80 at 55.

³⁴¹ Entry dated November 20, 1971 in the diary of MacKenzie's father-in-law, Beresford F. Proctor. See also Statement of James J. Kane, Exhibit L to Defendants' Motion for a New Trial, United States v. DiCarlo, MacKenzie.

³⁴² Mansueto testimony, 2 M/M 2/13/79 at 72-78, 119.

³⁴³ Id. at 117.

diary³⁴⁴ contains an entry reflecting a call from Bill Masiello on November 19, 1971. Mansueto testified that he successfully put off Manzi and Masiello's demands for another six months.³⁴⁵

The January 1972 Payment from McKee to MacKenzie. Ronald MacKenzie testified to the Commission that he did receive MBM cash in relation to the DiCarlo-Sirianni Committee report, that he shared the cash with DiCarlo, and that the first of these MBM payments was handed to MacKenzie by MBM President Gerald McKee, Jr. in January 1972 at the Point After Lounge in Boston.³⁴⁶ MacKenzie testified that the amount of that payment by McKee was \$5,000.³⁴⁷

MacKenzie's testimony corroborates testimony by McKee at the DiCarlo-MacKenzie trial that McKee flew to Boston on January 20, 1972 and went to the Point After Lounge in Boston where McKee handed cash to MacKenzie.³⁴⁸ However, McKee testified that the amount involved was \$10,000 -- not \$5,000.³⁴⁹

There is no question that MBM generated \$10,000 in cash on January 20, 1972. However, two different procedures were involved. An MBM check for \$5,000 was cashed at MBM's New York bank on January 20, 1972.³⁵⁰ The other \$5,000 was generated by a wire transfer -- from the same bank account at the same bank in New York³⁵¹ -- to MBM's Boston bank, where a \$5,000 check was then drawn and cashed.³⁵²

McKee testified at the DiCarlo-MacKenzie trial that he carried the New York

344 Mansueto pocket diary 11/17/71 entry re: 11/19/71.

345 Mansueto testimony, 2 M/M 2/13/79 at 117, and passim.

346 MacKenzie testimony, Sp. Comm. 5/28/80 at 39-42.

347 Id. at 41.

348 McKee testimony, 5 DiC 1/31/77 at 33-36, 40-45.

349 Id. at 44.

350 MBM check #2817 dated January 20, 1972 for \$5,000 payable to cash.

351 Testimony of Andrew H. Serell, 13 DiC 2/10/77 at 153.

352 McKee testimony, 5 DiC 1/31/77 at 34. MBM-Boston check #2937 dated January 20, 1972 for \$5,000 payable to cash.

\$5,000 cash on the airplane from New York to Boston, ³⁵³ and that the Boston \$5,000 cash was brought to McKee at the Point After Lounge,³⁵⁴ where he combined it with the New York \$5,000 and handed the total of \$10,000 to MacKenzie.³⁵⁵

When Commission staff asked McKee to explain why he would have carried \$5,000 with him but had the other \$5,000 wire transferred up, McKee had no explanation.

Moreover, there was no testimony by anyone at the DiCarlo-MacKenzie trial, and no statement by McKee in any Commission interviews, that MacKenzie or DiCarlo was unsatisfied with the \$5,000 McKee had brought up so that another \$5,000 had to be wired up. If such a scenario had occurred, one might expect that McKee would have remembered it. Nor was there any suggestion by McKee that \$5,000 was first wire-transferred up, but that MacKenzie or DiCarlo then demanded another \$5,000 so that McKee had to fly up with it (such as because it was too late for another wire transfer).

After discussing this matter with Commission staff, McKee agreed to a polygraph examination on the issue, to be administered by a mutually-agreed-upon examiner.³⁵⁶ At the polygraph examination, McKee again denied that \$5,000 of the \$10,000 generated on January 20, 1972 went elsewhere than to MacKenzie.³⁵⁷ The examiner, after reviewing the polygraph charts, concluded that McKee was not telling the truth.³⁵⁸ After McKee was told that he had failed the test on the January 1972 payment issue, McKee remarked that he did not regard that issue as

³⁵³ McKee testimony, 5 DiC 1/31/77 at 33-34.

³⁵⁴ Id. at 34, 43.

³⁵⁵ Id. at 43-44.

³⁵⁶ See letter dated May 19, 1980 from Gerald McKee, Jr. to Edward [J.] McGrath, concerning suggested questions for polygraph examination.

³⁵⁷ Report dated June 9, 1980 of polygraph examination extended to Gerald McKee, Jr., prepared by Edward J. McGrath, staff examiner for Scientific Security - Raymond S. August, Inc., at 3.

³⁵⁸ Id. As discussed elsewhere in this report, polygraph results are not generally admissible as evidence in court, and the Commission is familiar with the limitations of such examinations.

being particularly significant.³⁵⁹ It should also be noted that in 1975 when McKee first discussed the January 1972 payment with McKee's lawyers, McKee said the amount involved was \$5,000 -- according to the notes of one of McKee's lawyers.³⁶⁰

Two other aspects of the January 1972 payment to MacKenzie should be discussed. One relates to MacKenzie's testimony that the January 1972 payment was the first he had received from MBM. The second relates to why McKee delivered the payment himself, instead of sending someone else.

McKee testified at the DiCarlo-MacKenzie trial that when McKee met with MacKenzie at the Point After Lounge on January 20, 1972, MacKenzie appeared "uneasy" and "embarrassed"³⁶¹ and that after McKee handed the cash to MacKenzie³⁶² --

"[MacKenzie] said he'd better be careful driving home. It would make a very unpleasant splash in the news headlines -- Senator in car crash with \$10,000 cash."

One might expect that if MacKenzie had already received \$5,000 cash payments from MBM in October 1971 and November 1971 that MacKenzie would not be "uneasy," "embarrassed," or making such comments in January 1972.

The fact that McKee delivered the money himself -- which is admitted by both McKee and MacKenzie -- is also worth noting. Of all the cash payments that MBM has admitted or is alleged to have made in or out of Massachusetts, the January 20, 1972 payment to MacKenzie is the only payment for which McKee has said that he was, or for which he has been alleged to have been, the courier.

There are various possibilities as to why McKee made this payment himself. One possibility is that it was the first payment to MacKenzie (to share with DiCarlo), and McKee felt that he should make this payment himself. Another possibility is that no one else was available to make the payment. A third possibility is that McKee had to make the payment in order to patch up a

³⁵⁹ McKee interview with Commission staff.

³⁶⁰ See memorandum dated April 29, 1975 from RGS [Monasch Chazen & Stream attorney Robert G. Smith] to ACS [Arnold C. Stream], re: "MBM Commonwealth matter," at 3.

³⁶¹ McKee testimony, 5 DiC 1/31/77 at 43.

³⁶² Id. at 45.

deteriorated relationship between MBM's normal emissaries -- Shields and Harding -- with MacKenzie and DiCarlo. There is evidence tending to support the third possibility, in conjunction with the first possibility. That evidence is supplied by testimony of Daniel Shields and Joseph DiCarlo, testimony that was given before the Commission and that had not been forthcoming at the DiCarlo-MacKenzie trial.

Shields testified to the Commission that a meeting involving Shields, Harding, DiCarlo, and MacKenzie took place in a lounge/restaurant in Boston, probably on January 16 or 17, 1972.³⁶³ Shields dated the meeting by reference to (a) his memory of the chronology of events, (b) reference to expense reports,³⁶⁴ and (c) his memory that DiCarlo's hand was bandaged.³⁶⁵ The Commission, in checking Shields's account, found evidence that DiCarlo broke his hand on December 24, 1971³⁶⁶ and that DiCarlo's hand was bandaged for most of January 1972.³⁶⁷

Shields testified that DiCarlo lambasted MBM for not having made any of the payments that McKee had promised.³⁶⁸ The discussion got so heated, Shields testified,³⁶⁹ that Shields eventually --

"got equally belligerent and I asked [DiCarlo] if he wanted the money that was in my pocket.... [DiCarlo then] said that would do for starters."

Shields testified that, after adjourning to the men's room with Harding, Shields and Harding returned to the table, whereupon Shields passed several hundred dollars under the table to DiCarlo. According to Shields's testimony³⁷⁰ --

³⁶³ Shields testimony, Sp. Comm. 6/2/80 at 46-48.

³⁶⁴ Shields's American Express card receipts for the Sheraton-Boston on January 16, 1972 and for Charley's Eating and Drinking Saloon on January 17, 1972.

³⁶⁵ Shields testimony, Sp. Comm. 6/2/80 at 53.

³⁶⁶ DiCarlo testimony, Sp. Comm. 6/3/80 at 116-117.

³⁶⁷ William R. DiMento 9/5/79 interview.

³⁶⁸ Shields testimony, Sp. Comm. 6/2/80 at 53-56.

³⁶⁹ Id. at 56.

³⁷⁰ Id. at 59.

"Senator DiCarlo [then] counted [the money] and asked me what this was.... I said that is what I had in my pocket.... [DiCarlo] said it [i.e., the small amount of money, in comparison with what DiCarlo was owed by MBM] was an insult.... I believe I responded I thought it was more than he was worth."

When the Commission called DiCarlo to testify, he indicated that he did not dispute Shields's account.³⁷¹

Shields further testified that after this acrimonious meeting with DiCarlo, Shields informed McKee what had happened.³⁷² According to Shields, McKee responded that he would take care of the situation.³⁷³ If the DiCarlo-Shields-MacKenzie-Harding meeting did occur on January 16 or 17, 1972, that might explain why McKee came to Boston with money for MacKenzie (to share with DiCarlo) on January 20, 1972.

As to the \$5,000 cash that MacKenzie admits having gotten from McKee on January 20, 1972, MacKenzie testified to the Commission that he (MacKenzie) took \$2,500 of the money, put it into a plain white envelope, and handed it to DiCarlo in DiCarlo's State House office on January 21, 1972.³⁷⁴

Endicott Peabody testified to the Commission,³⁷⁵

and at the Post Audit Subcommittee hearing,³⁷⁶ that MBM told Peabody nothing about the payments to DiCarlo and MacKenzie. Peabody's MBM billing record for January 24, 1972 reads:

"DiCarlo + Carroll + McKee --- 2.0 [hours]."

When asked about the entry by the Commission, Peabody testified:³⁷⁷

371 DiCarlo was called before Shields had testified. However, as DiCarlo acknowledged, DiCarlo had been informed by Commission staff of Shields's expected testimony. DiCarlo testimony, Sp. Comm. 4/7/80 at 25-27. DiCarlo was called again to testify on the day after Shields had testified. DiCarlo testified that he had no memory of such a meeting with Shields but, DiCarlo added, "I'm not saying that it didn't occur." DiCarlo testimony, Sp. Comm. 6/3/80 at 118; 117-119.

372 Shields testimony, Sp. Comm. 6/2/80 at 59-60.

373 Id. at 60.

374 MacKenzie testimony, Sp. Comm. 5/28/80 at 41.

375 Peabody testimony, Sp. Comm. 6/19/80 at 231.

376 Peabody testimony, P.A. 3/29/78 at 85-86.

377 Peabody testimony, Sp. Comm. 6/19/80 at 214.

"It appears from the daily office record that I put down one hour and corrected that to two hours. So, that it may be that on that date I spoke to DiCarlo and Carroll or spoke to Carroll about DiCarlo or the report. I have no idea what I spoke to them about. I have no memory. Later spoke to McKee or talked with him."

The February 1972 Payment from Harding to MacKenzie. Ronald MacKenzie testified to the Commission that William Harding gave \$8,000 in MBM cash to MacKenzie in the men's room at the Parker House restaurant during February of 1972.³⁷⁸ MacKenzie said that Harding mentioned that he was a bit short and that Harding wanted to know if he could keep \$400 of the \$8,000.³⁷⁹ MacKenzie testified that he agreed to let Harding have \$400, and that when MacKenzie got ready to share the money with DiCarlo, MacKenzie gave DiCarlo his full \$4,000 -- with MacKenzie keeping just \$3,600 for himself.³⁸⁰ MacKenzie said that he handed DiCarlo \$4,000 in MBM cash in a portion of the State House that MacKenzie described as the Senate "locker room."³⁸¹

At the DiCarlo-MacKenzie trial, MBM President McKee testified that Harding was given \$10,000 in cash in February 1972 to give to MacKenzie.³⁸² McKee identified a \$10,000 MBM check as the source of the cash.³⁸³ As explained in more detail in Chapter V of this Final Report, there is evidence indicating that the proceeds of the \$10,000 check identified by McKee actually went to Albert Manzi, via William Masiello. The money for MacKenzie apparently came from other cash generations performed by MBM in February 1972 and discussed in Chapter V.

The May 1972 Payment from Jack Thomas to MacKenzie. In testimony before the Commission,³⁸⁴ Ronald MacKenzie agreed, essentially in full, with MBM Vice

378 MacKenzie testimony, Sp. Comm. 5/28/80 at 42-43.

379 Id. at 43.

380 Id. at 44.

381 Id.

382 McKee testimony, 5 DiC 1/31/77 at 52-54.

383 MBM check #2987 dated 2/16/72 for \$10,000 payable to cash.

384 MacKenzie testimony, Sp. Comm. 5/28/80 at 48-49.

President Jack Thomas's testimony at the DiCarlo-MacKenzie trial³⁸⁵ about \$10,000 in MBM cash that Thomas said he gave to MacKenzie on May 12, 1972. The cash was handed to MacKenzie at MBM's office on Boylston Street, Thomas and MacKenzie agree.

MacKenzie further testified that he had never before handled \$10,000 in cash and that, when he gave \$5,000 of the cash to DiCarlo in the Senate locker room on the following day, MacKenzie remarked:³⁸⁶

"Here's five big ones, Joe, from these guys."

DiCarlo's Visit to
MBM's New York Office

This discussion of the DiCarlo-MacKenzie activities in regard to MBM concludes with consideration of a meeting that took place in New York between DiCarlo, MacKenzie and McKee. Testimony at the DiCarlo-MacKenzie trial about this meeting was hotly contested and was significant in the Government's case, particularly against DiCarlo.

In brief, the testimony at the DiCarlo-MacKenzie trial was that DiCarlo and MacKenzie went to New York, met with McKee in MBM's office, went for drinks with some other MBM employees, and then had dinner at the Gaslight Club in New York with McKee and Shields.³⁸⁷ According to the DiCarlo-MacKenzie trial testimony, DiCarlo complained at the Gaslight Club about MBM's lateness in making payments and said that if MBM would be prompt in meeting its commitments, DiCarlo could be of great assistance to MBM in Massachusetts.³⁸⁸

At the DiCarlo-MacKenzie trial, the DiCarlo-MacKenzie defense team tried to attack the testimony of the New York meeting by demonstrating that the meeting

³⁸⁵ Thomas testimony, 11 DiC 2/8/77 at 74-83.

³⁸⁶ MacKenzie testimony, Sp. Comm. 5/28/80 at 40, 49-50.

³⁸⁷ McKee testimony, 5 DiC 1/31/77 at 73-78, 83-86; Shields testimony, 15 DiC 2/14/77 at 87-93.

³⁸⁸ McKee testimony, 5 DiC 1/31/77 at 75-76, 83-85; Shields testimony, 15 DiC 2/14/77 at 93.

could not have occurred on the date and time that the MBM witnesses said it did.³⁸⁹ After DiCarlo and MacKenzie were convicted, they continued to argue that the meeting could not have occurred when the MBM witnesses said it did.³⁹⁰ Moreover, they argued that proof that the meeting occurred on some other date should entitle them to a new trial, since they claimed that Judge Skinner had instructed the jury that it had to acquit DiCarlo unless the jury found that the meeting occurred on July 6, 1972 -- as the MBM witnesses had said -- and not on any other date.³⁹¹

Before a discussion about when the meeting occurred, several observations are in order. First, there is now no dispute that DiCarlo and MacKenzie did visit MBM's office and thereafter go to the Gaslight Club.³⁹² Second, McKee, Shields, and MacKenzie have all testified that DiCarlo complained on that occasion about MBM not paying promptly.³⁹³ DiCarlo has not disputed this.³⁹⁴ Third, in reviewing the transcript of Judge Skinner's charge to the jury, the Commission can find no clear instruction that the jury had to acquit unless it found the New York visit to have occurred on July 6, 1972 and on no other date. Fourth, the testimony about the meeting would make as much sense, and be equally as damaging to DiCarlo, if the meeting had occurred in March or April of 1972, which is when DiCarlo and MacKenzie believe that it occurred.³⁹⁵ Indeed, the testimony would be as damaging even if the meeting took place on some entirely different date.

³⁸⁹ See Final Arguments of Defense Counsel, DiC 2/24/77 at 36-43.

³⁹⁰ See Defendants' Motion for a New Trial, United States v. DiCarlo, MacKenzie, at 3, 6-9.

³⁹¹ See United States v. DiCarlo, MacKenzie, 575 F. 2d 952, 960-61 (1st Cir. 1978).

³⁹² MacKenzie acknowledged his presence at Sp. Comm. 5/28/80 at 45-48. DiCarlo acknowledged his presence at Sp. Comm. 4/7/80 at 29.

³⁹³ McKee testimony, 5 DiC 1/31/77 at 75-76; Shields testimony, 15 DiC 2/14/77 at 93; MacKenzie testimony, Sp. Comm. 5/28/80 at 47-48.

³⁹⁴ DiCarlo testimony, Sp. Comm. 4/7/80 at 29.

³⁹⁵ MacKenzie testimony, Sp. Comm. 5/28/80 at 45-46.

Nonetheless, because of DiCarlo's heavy emphasis on the incorrectness of the date of the meeting, the Commission did spend considerable time trying to determine when the meeting occurred. After intensive investigation, no definitive answer is possible. Assuming that the New York visit did involve a stop at the Gaslight Club (as all the witnesses testified), and assuming that the bill was paid by a charge to Shields's account (since Shields apparently was the only one who had a "key" admitting him to the club),³⁹⁶ and assuming that the microfilm of Gaslight Club receipts made available to the Commission is a complete and accurate record of all such receipts for the period in question, the only reasonable possibilities for the date of the New York visit are October 16, 1971; December 29, 1971; May 2, 1972; and July 6, 1972. Those are the dates on which there were Shields Gaslight Club receipts involving enough "guests" at the table, as reflected on the receipts. Shields, MacKenzie, and DiCarlo all recalled the New York visit as occurring during cold weather.³⁹⁷ Their recollections were seconded by William Harding and by Harding's then-fiancee, who met with DiCarlo and MacKenzie on the day of the New York visit.³⁹⁸ That seemed to rule out the May 2, 1972 and July 6, 1972 dates.

As to October 16, 1971, DiCarlo's appointment calendar indicates that DiCarlo served as toastmaster at a Sons of Italy banquet in Cambridge, Massachusetts on that date.³⁹⁹ The appointment calendar indicates that the banquet was scheduled to start at 6:30 p.m.⁴⁰⁰ DiCarlo could not have been in New York that night if he were present at the Sons of Italy banquet. The Commission contacted organizers of the banquet who confirmed, from their memory, that

³⁹⁶ Shields testimony, Sp. Comm. 6/2/80 at 76-77; 15 DiC 2/14/77 at 91.

³⁹⁷ Shields testimony, Sp. Comm. 6/2/80 at 73; MacKenzie testimony, Sp. Comm. 5/28/80 at 46; DiCarlo 12/8/78 interview at 9.

³⁹⁸ Affidavit of William Harding and affidavit of Salme Harding, Exhibits W and X to Defendants' Motion for a New Trial, United States v. DiCarlo, MacKenzie.

³⁹⁹ DiCarlo office appointment calendar, at 10/16/71.

⁴⁰⁰ Id.

DiCarlo did serve as toastmaster, as he had been scheduled to do. Thus, October 16, 1971 is unlikely as the date of the New York visit.

There is more reason to believe that the New York visit occurred on December 29, 1971. Shields's recollection is that the precise agreement between DiCarlo and McKee about how much cash would be paid to DiCarlo (through MacKenzie) was made during DiCarlo's New York visit.⁴⁰¹ If that is so, and if the first payment was not made until January 1972, then December 29, 1971 would be a logical date for the New York visit.

Moreover, Shields told Commission staff that Shields had a vague recollection of having seen DiCarlo at the Gaslight Club with DiCarlo's hand bandaged or his arm in a sling, and of DiCarlo's not joining the others in drinks because of doctor's orders to avoid drinking while taking the pain-killers for his recently injured hand.⁴⁰² Since DiCarlo broke his hand on December 24, 1971,⁴⁰³ and since the cast apparently came off about a week thereafter,⁴⁰⁴ there is additional reason to believe that the New York visit occurred on December 29, 1971. Moreover, the attorney who interviewed MBM President Gerald McKee, Jr. in 1975 recalled in an interview in 1979 with Commission staff that McKee had mentioned that DiCarlo had a bandaged hand at the Gaslight Club.⁴⁰⁵ And McKee told Commission staff that he had a vague recollection of DiCarlo's having a bandaged hand at the Gaslight Club.⁴⁰⁶

MacKenzie and DiCarlo, however, have told Commission staff that they are firm in their recollections that the New York meeting took place in March or April of 1972.⁴⁰⁷ Moreover, MacKenzie told Commission staff that he is sure that

⁴⁰¹ Shields testimony, Sp. Comm. 6/2/80 at 75; Shields 2/24/80 interview at 7.

⁴⁰² Shields 2/24/80 interview at 7.

⁴⁰³ DiCarlo testimony, Sp. Comm. 6/3/80 at 116-117.

⁴⁰⁴ William R. DiMento 9/5/79 interview.

⁴⁰⁵ Notes of 11/6/79 interview of Robert G. Smith by Special Commission staff.

⁴⁰⁶ McKee 9/5/79 interview.

⁴⁰⁷ MacKenzie 4/2/80 interview at 6; DiCarlo 12/8/78 interview at 9.

DiCarlo's hand was not bandaged during the New York visit.⁴⁰⁸ Thus, this question remains unresolved.⁴⁰⁹

The proceedings before, during, and after the DiCarlo-MacKenzie trial are discussed in Chapter VIII of this Final Report. Before concluding the present chapter, we turn to one more challenge that MBM faced in regard to its UMass/Boston contract.

The Investigation in 1972-73 by Auditor Joseph A. Davey
of the Post Audit Bureau

Scarcely six months after MBM had made its final DiCarlo-MacKenzie payment, MBM learned that it was faced with still another challenge to its UMass/Boston contract. An auditor named Joseph A. Davey, who had formerly worked for the State Auditor's office⁴¹⁰ and who in 1972 was working for the Joint Legislative Committee on Post Audit and Oversight's Post Audit Bureau,⁴¹¹ was looking with a critical eye into various aspects of MBM's UMass/Boston contract.⁴¹²

Davey's investigation never resulted in any final or public report, and questions were raised in 1977 about whether Davey's investigation had been improperly halted because of political pressure exerted on MBM's behalf.⁴¹³ Since Davey had died in 1975,⁴¹⁴ he was not available to answer the questions.

⁴⁰⁸ MacKenzie 4/2/80 interview at 5.

⁴⁰⁹ DiCarlo told Commission staff that he recalled DiCarlo and MacKenzie having stayed at the Warwick Hotel in New York on the night in question. He added that MBM had paid the bill. DiCarlo 12/8/78 interview at 9. Harding 12/25/71 expense report. The Commission could find only one charge slip in MBM's files for the Warwick Hotel. The slip was dated December 25, 1971. Perhaps someone else stayed at the Warwick Hotel on December 25, 1971. Or perhaps the charge slip contained the wrong date, and perhaps MacKenzie stayed at the Warwick on December 15, 1971 when he went (apparently without DiCarlo) to the 21 Club in New York with MBM officials. MacKenzie testimony, Sp. Comm. 5/28/80 at 33-36. Or, perhaps the receipt should have said December 29, 1971 and was for DiCarlo and MacKenzie. The hotel apparently discarded its records long ago, so there is no way to reach a conclusive determination from among these alternatives. The Commission also found airline ticket credit card receipts for a flight from Boston to New York dated December 29, 1971 and for a flight from New York to Boston dated December 30, 1971, charged to the American Express account of Joseph DiCarlo but bearing signatures that were obviously not his normal signature. Both slips bear the notation "OK" and initials; the necessity for approval of the charges is consistent with DiCarlo's having charged the tickets, but having been unable to produce his normal signature because of an injured hand.

⁴¹⁰ Testimony of William Finnegan, Sp. Comm. 5/29/80 at 11.

⁴¹¹ Id. at 10.

⁴¹² F.A. Report at 93.

⁴¹³ Id. at 92.

⁴¹⁴ Id. at 96.

The Post Audit Committee established a special subcommittee, chaired by Rep. Gerald M. Cohen (D-Andover) to investigate the matter.⁴¹⁵ The Post Audit Subcommittee held four months of public and private hearings, culminating in a final report which was filed on August 14, 1978.⁴¹⁶ The Subcommittee's work was concluded and its files were forwarded to the Commission as a result of the legislation which established the Commission.⁴¹⁷

The Commission's Final Report will not review at length the matters covered by the Post Audit Subcommittee in its report. However, a brief summary is necessary in order to gain a full perspective on MBM matters and since there is some new evidence that relates to the matters reviewed by the Post Audit Subcommittee.

Perhaps the most startling new testimony has been given by William H. Finnegan, the staff director of the Post Audit Bureau in 1972-73. During the Post Audit Subcommittee hearings in 1978 Finnegan's superior, Post Audit Committee Chairman Gerald Lombard (D-Fitchburg), testified that Finnegan had told Lombard about a meeting that Finnegan had had with Senator Joseph DiCarlo in regard to MBM.⁴¹⁸ When Finnegan testified to the Post Audit Subcommittee in 1978, he denied having had such a meeting with DiCarlo.⁴¹⁹

In testimony before the Commission in 1980, however, Finnegan testified that DiCarlo summoned Finnegan to DiCarlo's office late in 1972.⁴²⁰ According to Finnegan's testimony, DiCarlo expressed concern about Post Audit Bureau auditor Davey's investigation into the MBM-UMass/Boston contract.⁴²¹ Finnegan further testified that DiCarlo instructed Finnegan to tell Post Audit Chairman Lombard that DiCarlo felt that there should not be a new report about MBM contract

⁴¹⁵ Id. at 1.

⁴¹⁶ Joint Committee on Post Audit and Oversight, Subcommittee Report on M.B.M., dated August 14, 1978.

⁴¹⁷ Commonwealth of Massachusetts, Resolves, c. 5 (1978), at 4.

⁴¹⁸ Testimony of Gerald Lombard, P.A. 3/15/78 at 166-167.

⁴¹⁹ Finnegan testimony, P.A. 3/20/78 at 123-124.

⁴²⁰ Finnegan testimony, Sp. Comm. 5/29/80 at 16.

⁴²¹ Id. at 16-17.

since DiCarlo had already investigated it and did not "want to be embarrassed by any subsequent legislative action on that subject."⁴²² Finnegan testified that he relayed DiCarlo's message to Lombard, who replied that since DiCarlo was likely to become Senate Majority Leader, his wishes should be respected and the investigation by Davey should be discontinued.⁴²³ DiCarlo, in testimony to the Commission, denied that he had such a meeting with Finnegan.⁴²⁴

Although Finnegan has said that he told Davey not to pursue the MBM matter, Finnegan testified that Davey was an independent person who decided without authorization to continue looking into MBM.⁴²⁵ MBM learned that Davey was pursuing the matter and decided to take further action.

On November 24, 1972, Jeremiah Lambert -- Endicott Peabody's partner -- wrote to MBM President McKee that Peabody had learned from Frederick Kussman of the BBC that the Post Audit Committee was looking into the MBM-UMass/Boston contract.⁴²⁶ Lambert asked whether McKee wanted the Peabody firm --

"to find out what specific issues have been raised as to MBM's performance to date so that these can be dealt with if they stand in the way of extension of Phase I and payment of the delay claim."

McKee apparently answered affirmatively, because Peabody thereafter telephoned Post Audit Bureau Director Finnegan and requested a meeting.⁴²⁷

A meeting between Peabody and Finnegan took place on January 29, 1973.⁴²⁸

⁴²² Id. at 17.

⁴²³ Id. at 18.

⁴²⁴ DiCarlo testimony, Sp. Comm. 4/7/80 at 28-29.

⁴²⁵ Finnegan testimony, Sp. Comm. 5/29/80 at 16.

⁴²⁶ Letter dated November 24, 1972 from Jeremiah D. Lambert to Gerald McKee, Jr. Lambert referred to the committee as "the standing legislative Committee on Investigation."

⁴²⁷ Finnegan testimony, Sp. Comm. 5/29/80 at 21.

⁴²⁸ Peabody law firm MBM tub card 48.

Finnegan was sent a memorandum dated January 29, 1973 by auditor Davey.⁴²⁹ The memorandum, with exhibits, reviewed MBM's UMass/Boston contract. The memorandum said, in part:

"An examination of the contract ... for Project Management Services University of Massachusetts - Columbia Point ... indicates that a [fixed] fee of 1.53% of \$150,000,000 was paid to this firm for project management services for Phase I (fee 2,295,000).

"Examination of the budget summary sheet for Phase I, as of December 1, 1972, indicates total project estimated cost of \$134,289,953.50.

...

"[I]t appears that the project estimated costs should be reduced by \$14,350,000 to arrive at the project costs under the direction of the project manager.

"From the foregoing it appears as though the fixed fee should have been based on approximately \$120,000,000 instead of the \$150,000,000 appearing in the fixed fee contract of [McKee-Berger-]Mansueto, Inc. ..."

In essence, Davey was suggesting that MBM may have been overpaid more than \$450,000 on the Phase I fixed fee (since the difference between \$150 million and \$120 million is \$30 million, and 1.53% of \$30 million equals \$459,000).

About a week after Peabody's January 29, 1973 lunch with Finnegan at Jimmy's Harborside restaurant,⁴³⁰ Peabody wrote a "PRIVATE AND CONFIDENTIAL" letter to McKee⁴³¹ which said, in part:

"Last week I had lunch in Boston with Bill Finnegan who is now the Director of the Legislative Post Audit Bureau.... When I was Governor, he was a member of the House of Representatives and also served as my legislative assistant in the House. He is a straight shooter and an able person. The Legislative Committee, under which he serves, is chaired by Representative Jerry Lombard of Fitchburg who is a fair and decent person.... At the present time a former Assistant Auditor, named Davey, is looking at the University of Massachusetts contracts. According to Finnegan, he is fair and does not believe everything the Auditor [presumably Buczko] said in his attacks on MBM last year. Finnegan has told me that before he publicizes any matters from his Bureau, he will present them to me in advance....

"He provided me with the following information:

" - The Auditor [presumably Buczko] is preparing an attack on the UMass project in South Boston. MBM will be included. Apparently, he is still licking his wounds over what happened in the legislative investigation [presumably by the DiCarlo-Sirianni Committee] last year.

" - Davey is examining the methane gas problem which was raised by the legislature. Finnegan hopes that MBM did all that was required to be done by it during the 6-month delay period....

⁴²⁹ Interoffice memo dated January 29, 1973 from J.A. Davey to W.H. Finnegan.

⁴³⁰ Finnegan testimony, Sp. Comm. 5/29/80 at 25.

⁴³¹ Letter dated February 7, 1973 from Endicott Peabody to Gerald McKee, Jr.

" - A complaint has been made that there was no supervision by MBM with respect to two items which were specifically included in its contract. Finnegan was vague about this. Perhaps we can find out more about it later.

" - Renegotiation of the MBM contract may be requested on the grounds that the contract actually cost less than first estimated and the fee should be based on the lower cost.

. . .

"I expect to be in Boston at least once a week during the next several weeks and will communicate with Jack Thomas when there. Some followup of this letter is called for. While I am sending a copy to Jack Thomas, I expect both you and him not to disclose it to others."

In a letter dated February 9, 1973 McKee responded to Peabody,⁴³² saying --

"I appreciate the information contained in your February 7th letter and feel better about the U/Mass audit now that you are following it up for us. I am sure Jack Thomas will be meeting with you and will provide you with whatever you need to be effective for us."

Both Peabody and Finnegan have testified that there was no follow-up by Peabody.⁴³³

No report ever emerged from the Post Audit Bureau, however.⁴³⁴ According to Finnegan, Davey became ill and left the Bureau, and no further work regarding MBM was done because Davey had not been supposed to investigate MBM's contract in the first place.⁴³⁵

During the 1978 Post Audit Subcommittee hearings, there was speculation that Davey had been fired as a result of the Peabody-Finnegan meeting.⁴³⁶ However, Finnegan has presented the Commission with a hand-written letter dated November 28, 1973 from Davey to Finnegan in which Davey indicated appreciation that Finnegan had offered Davey further work with the Post Audit Bureau.⁴³⁷

⁴³² Letter dated February 9, 1973 from Gerald McKee, Jr. to Endicott Peabody.

⁴³³ Peabody testimony, P.A. 3/29/78 at 69, 76; Finnegan testimony, Sp. Comm. 5/29/80 at 29.

⁴³⁴ P.A. Report at 92, 95-96.

⁴³⁵ Finnegan testimony, Sp. Comm. 5/29/80 at 33-34; P.A. 3/20/78 at 60-61.

⁴³⁶ P.A. Report at 95-96.

⁴³⁷ Letter dated November 28, 1973 from Joseph A. Davey to William H. Finnegan.

In 1978, after the first accusations appeared in print that the Post Audit Bureau had quashed Davey's investigation, Finnegan -- with Lombard's approval -- had notes of Post Audit Committee meetings from 1973 altered to eliminate references to MBM and/or a UMass investigation.⁴³⁸ Later, Finnegan and Lombard decided that their alteration of the notes should be disclosed. After Lombard told the Post Audit Committee about the deletions, Finnegan was discharged and Lombard eventually resigned his chairmanship.⁴³⁹

⁴³⁸ P.A. Report at 96-97.

⁴³⁹ P.A. Report at 97-101.

CHAPTER VIII

THE INVESTIGATION, PROSECUTION, APPEALS, AND
POST-TRIAL MOTIONS OF JOSEPH DiCARLO AND RONALD MacKENZIE

In 1977, Massachusetts State Senate Majority Leader Joseph J.C. DiCarlo (D-Revere) and Massachusetts State Senator Ronald C. MacKenzie (R-Burlington) were tried and convicted of federal felonies in connection with MBM. Their defenses at trial, and particularly their post-trial motions, raised many questions in the press and among the public, leading in large part to the creation of the Commission.

Chapter VII of this Final Report considered the evidence that the Commission discovered concerning the substance of the activities in 1971 and 1972 of DiCarlo and MacKenzie which gave rise to the 1977 trial. The present chapter sets forth the evidence concerning the federal investigation, trial, and post-trial proceedings involving DiCarlo and MacKenzie.

The Investigations of MBM in Philadelphia
Which Led to the First Allegations
About DiCarlo and MacKenzie

MBM President Gerald McKee, Jr. has testified that the DiCarlo-MacKenzie case resulted from McKee's decision, as a matter of conscience and public-spiritedness, to tell prosecuting authorities about the "extortion" of MBM by DiCarlo and MacKenzie in 1971 and 1972.¹ McKee first gave information about the DiCarlo-MacKenzie "extortion" in late 1974² to federal officials from Philadelphia, Pennsylvania.³ Since one of the Commission's major responsibilities was to investigate charges by DiCarlo and MacKenzie that they were innocent and had been convicted largely through perjured testimony by McKee,⁴ the Commission felt that it was necessary to look into the facts surrounding McKee's decision in 1974 to tell authorities about DiCarlo and MacKenzie.

¹ McKee testimony, Sp. Comm. 6/26/80 at 11-12.

² Id.

³ McKee testimony, 14 M/M 3/7/79 at 124-125.

⁴ Defendants' Motion for a New Trial, United States v. DiCarlo, MacKenzie, Cr. 76-339-1-S, 76-339-2-S (D. Mass., November 9, 1977), at 5-6, 8.

McKee was talking to federal authorities from Philadelphia in 1974 because those officials were investigating allegations that MBM, through its wholly owned subsidiary MCM, had illegally obtained a contract with the Philadelphia International Airport.⁵ The Philadelphia FBI investigation had apparently started in 1972; Philadelphia Mayor Frank Rizzo disclosed to the press on December 12, 1972 that a federal grand jury was investigating Philadelphia airport contracts.⁶ On December 22, 1972 Rizzo called for a city investigation of kickback charges related to the airport contracts,⁷ and a year later -- in December 1973 -- a Philadelphia Special Investigating Grand Jury called upon the newly-elected district attorney to investigate and prosecute certain public officials and certain officials of the Philadelphia Democratic City Committee for establishing "a system of political blackmail" in Philadelphia.⁸ The special grand jury, whose presentment was made public,⁹ reported that it had heard testimony that MBM's wholly-owned subsidiary MCM had obtained a contract at the Philadelphia airport through political figures who appeared to have been motivated by potential "political contributions."¹⁰

⁵ McKee testimony, 14 M/M 3/7/79 at 124-125.

⁶ Gene Harris and S. Robert Jacobs, "Rizzo Discloses U.S. Grand Jury Is Probing Airport Contracts," Philadelphia Evening Bulletin, December 12, 1972.

⁷ Gene Harris, "Rizzo Orders Probe of Kickback Charges," Philadelphia Evening Bulletin, December 23, 1972.

⁸ Philadelphia Special Investigating Grand Jury, June Term 1972, Twelfth Presentment, at 3.

⁹ See Joseph R. Daughen, "Jury Wants Top Phila. Democrats Prosecuted for Political Blackmail," Philadelphia Evening Bulletin, December 27, 1973.

¹⁰ Philadelphia Special Investigating Grand Jury, June Term 1972, Twelfth Presentment, at 1-2, 8, 15-16. The special grand jury heard testimony that illegal kickbacks in exchange for the award of city design and engineering contracts were demanded and received by John O'Shea (treasurer of the Democratic City Committee and president of the Thomas J. LaBrum Associates public relations firm) and by Leon Nurock (an optometrist active in fundraising for the Democratic City Committee). O'Shea, his firm, and Nurock all received substantial amounts of money from MBM/MCM for "consulting services." By May of 1972, when MCM arranged to have a share of the Philadelphia airport contract through a joint venture, MCM had paid Nurock a total of \$24,500. Through 1973, according to checks available to the Commission, MBM/MCM paid Nurock \$47,250 in consulting fees and \$10,547.91 in expenses. MBM also paid LaBrum Associates at least \$8,619.15 in 1973-74, and John O'Shea at least \$8,000 in the same years, according to checks available to the Commission. For further discussion see Appendix B to the present Final Report.

The evidence accumulated by the special city grand jury was turned over to the FBI and to a newly created state-funded special prosecutor.¹¹ By 1974, MBM activities were being investigated by the United States Internal Revenue Service as well as the FBI and the Philadelphia United States Attorney's Office.¹²

On October 28, 1974, McKee spoke to an FBI agent from Philadelphia about DiCarlo and MacKenzie.¹³ McKee has said, as previously noted, that he brought up the subject voluntarily and without prompting.¹⁴ The Philadelphia FBI agent, Klaus Rohr, in testimony at a hearing in 1978, agreed that McKee had volunteered the Boston information.¹⁵ A former Assistant United States Attorney in Philadelphia, Richard Galli, told Commission staff that he was also present at the meeting and that McKee brought up the DiCarlo-MacKenzie matter out of the blue.¹⁶

Arnold C. Stream, who served as McKee's attorney in 1974, told Commission staff (pursuant to a waiver of attorney-client privilege by McKee)¹⁷ that Stream had advised McKee in 1974 to disclose the DiCarlo-MacKenzie matter and testify about it to the Philadelphia federal grand jury. Stream explained that by this procedure McKee's activities in regard to DiCarlo and MacKenzie would be encompassed within the immunity agreement that Stream had negotiated for McKee.¹⁸

11 See Jeff Nesmith, "Phillips Says He Can't Prosecute Firm Because U.S. Probers Had the Evidence," Philadelphia Evening Bulletin, June 25, 1975.

12 See United States Department of the Treasury, Internal Revenue Service, document receipt dated March 25, 1974, for the return of four checks to MCM, Inc.; undated list of books and records of MCM for the calendar year ended December 31, 1973 submitted to IRS; letter dated November 19, 1974 from MBM treasurer Donald W. Ziegler to FBI Special Agent Klaus C. Rohr, concerning certain 1972 MBM checks; memorandum dated December 6, 1974 from Donald Ziegler to MBM comptroller Stanley Emerson, concerning a subpoena for MBM bank statements and canceled checks for 1972 and 1973 issued by the U.S. District Court for the Eastern District of Pennsylvania.

13 Hearing on Motion for Production of Witness Statement, United States v. DiCarlo, MacKenzie (D. Mass., September 6, 1978), at 4.

14 McKee testimony, Sp. Comm. 6/26/80 at 11-12.

15 Testimony of Klaus C. Rohr, 9/6/78 Hearing on Motion for Production of Witness Statement, at 24-25.

16 Notes of 10/20/78 interview of Richard Galli by Special Commission staff, at 1.

17 Letter dated September 13, 1979 from Gerald McKee, Jr. to attorney Arnold C. Stream, waiving attorney-client privilege.

18 Notes of 9/28/79 interview of Arnold C. Stream by Special Commission staff, at 1. See 18 U.S.C. s.1952 (Hobbs Act).

The Forwarding of the
DiCarlo-MacKenzie Allegations
to the Boston Office of the
Federal Bureau of Investigation

Federal authorities in Philadelphia did not forward the October 1974 DiCarlo-MacKenzie information from McKee until February 1975, after McKee had completed his testimony to the federal grand jury in Philadelphia.¹⁹ The Philadelphia FBI did not send the information directly to the Boston FBI office. Instead, it referred the information to the New York FBI office, commenting²⁰ that --

"No leads are being se[n]t out, and it is being left to the discretion of the Office of Origin to advise Boston regarding this information after it has been verified in New York."

The "Airtel" from Philadelphia FBI Special Agent Rohr that communicated the DiCarlo-MacKenzie story²¹ was date-stamped as received by the New York FBI on February 10, 1975. It was eventually forwarded to the Boston FBI and date-stamped as received there on February 24, 1975. According to Rohr's testimony, Rohr had drafted the Airtel within four days of the October 28, 1974 McKee interview.²²

The Rohr Airtel contained a version of the DiCarlo-MacKenzie story that is sharply different from the testimony that was eventually presented at the DiCarlo-MacKenzie trial. The Airtel said, in part:

"Shortly after beginning work on [the UMass/Boston] contract, ... the President of MBM, Mr. GERALD MC KEE, was approached by a Representative of Massachusetts Legislature, Senator MC KENSIE [sic]. This individual told MC KEE that MBM would have to pay \$100,000 to stay on the contract at the University of Massachusetts. MC KEE refused to make this payment. Shortly thereafter, a Commonwealth of Massachusetts hearing into the contract was initiated by Senator JOSEPH DICARLO.

¹⁹ Rohr testimony, 9/6/78 Hearing on Motion for Production of Witness Statement, at 30-31.

²⁰ FBI Airtel dated February 7, 1975 from Special Agent in Charge ("SAC") of the Philadelphia FBI office to the SAC of the New York FBI office, re: N.Y. FBI file no. 166-3647.

²¹ Id.

²² Rohr testimony, 9/6/78 Hearing on Motion for Production of Witness Statement, at 29.

"Toward the end of the hearings, MC KEE received word from DI CARLO that the outcome of the hearings could be favorable or unfavorable for MBM, depending on what kind of money MBM was willing to pay. At this time, MR. DANIEL SHIELDS, a Vice-President of MBM, contacted a RUSSELL DOBBS [sic], an insurance agent in Boston, Mass., as well as Massachusetts Senator MC KENSIE. Through MC KENSIE and DOBBS, as well as SHIELDS, a deal was arranged whereby MBM would pay \$40,000 to \$50,000 in order to have the hearings come out favorable for MBM. A deal to this end was arranged, and the Senate hearings concluded by exonerating MBM of any wrongdoing in the contract with University of Massachusetts. The enclosed Mauchly Construction Management checks reflect partial payment of \$13,500 to Senators MC KENSIE and DI CARLO from MBM. Additional funds were taken from another company known as MBM Developers, Inc., and delivered to Massachusetts."

This account differed so drastically from the trial testimony that it might have been a subject for intensive cross-examination by the defense. But it was not made available to the defense prior to, or during, the trial. It was made available more than a year after the DiCarlo-MacKenzie trial.²³ The Government then took the position that the Airtel would not have been producible under the Jencks Act,²⁴ and Judge Skinner, after a hearing, agreed.²⁵ In addition, the United States Attorney's office said that the Boston FBI had not forwarded the Airtel to the United States Attorney's Office until August 22, 1978 -- more than a year after the trial²⁶ -- although the Boston FBI agents who had worked on the case with the Boston United States Attorney's Office had seen the Airtel in 1975.²⁷

McKee, when shown the Rohr Airtel by the Commission, said that he had not given that account to Rohr.²⁸ It is not clear how Rohr came up with "Dobbs's" (Dodds's) name or why Rohr singled out the MCM checks.

²³ See letter dated August 24, 1978 from United States Attorney Edward F. Harrington (by Assistant United States Attorney Alan D. Rose), to Honorable Walter J. Skinner, re: Defendants' Motion for Production of Witness Statement, filed July 20, 1978 in United States v. DiCarlo, MacKenzie.

²⁴ Id. at 2.

²⁵ Statement of Judge Walter J. Skinner, at 9/6/78 Hearing on Motion for Production of Witness Statement, at 48-50.

²⁶ Harrington (by Rose) 8/24/78 letter to Judge Skinner, at 2.

²⁷ Representation by Assistant United States Attorney Alan D. Rose, at 9/6/78 Hearing on Motion for Production of Witness Statement, at 56-59, of what the FBI agents were prepared to testify.

²⁸ McKee 6/18/79 interview at 9; 8/30/79 interview at 3.

The First Knowledge
 By DiCarlo and MacKenzie
That They Were Being Investigated

In 1978, FBI Special Agent Klaus Rohr said that he had not taken contemporaneous notes of McKee's initial statement about DiCarlo and MacKenzie because Rohr had considered Massachusetts matters to be beyond the scope of his investigation.²⁹ However, in testimony to the Commission in 1980, Ronald MacKenzie said that he first learned that there might be a federal investigation of himself and DiCarlo when, in late 1974, William Harding called MacKenzie and said that he (Harding) had been asked, at the end of questioning before a Philadelphia grand jury, whether he knew two Massachusetts senators named DiCarlo and MacKenzie.³⁰ MacKenzie told the Commission that he told DiCarlo about Harding's call, a fact which DiCarlo also recalled.³¹

DiCarlo and MacKenzie apparently did not become seriously concerned about a federal investigation of their 1971-72 activities regarding MBM until they learned that the Boston FBI was actively investigating the matter.³² DiCarlo testified to the Commission that he learned of the Boston FBI investigation in the late spring or early summer of 1975. According to DiCarlo, he was called out of a meeting at the request of Senate President Kevin B. Harrington, who told DiCarlo that DiCarlo was the subject of a federal investigation.³³ DiCarlo testified that Harrington said he had learned this information from Thomas M. Joyce, a lobbyist. DiCarlo did not testify about how Joyce may have learned of the federal investigation.

DiCarlo testified that after receiving the initial news from Harrington, DiCarlo and Harrington met with Joyce to discuss the matter further. DiCarlo decided to accept their advice and utilize the services of attorney Walter J.

²⁹ Rohr testimony, 9/6/78 Hearing on Motion for Production of Witness Statement, at 25.

³⁰ MacKenzie testimony, Sp. Comm. 6/4/80 at 3.

³¹ Id. at 4; DiCarlo testimony, Sp. Comm. 6/3/80 at 8-9.

³² MacKenzie testimony, Sp. Comm. 6/3/80 at 4; DiCarlo testimony, Sp. Comm. 6/3/80 at 4-7.

³³ DiCarlo testimony, Sp. Comm. 6/3/80 at 4-6; notes of 12/8/78 interview of Joseph J. C. DiCarlo by Special Commission staff, at 13; DiCarlo 4/26/79 interview at 17.

Hurley,³⁴ Joyce's law partner. DiCarlo and MacKenzie thereafter met to discuss the situation and, upon the advice of Hurley and Harrington (according to DiCarlo), DiCarlo persuaded MacKenzie to retain attorney Robert V. Mulkern instead of the attorney whom MacKenzie initially planned to engage.³⁵

Although DiCarlo and MacKenzie were not identified by name, a newspaper article³⁶ on June 12, 1975 spread the word that --

"[t]wo prominent Massachusetts politicians are reportedly under investigation by the Federal Bureau of Investigation for allegedly accepting a bribe from a New York construction management firm in connection with the construction of the University of Massachusetts Boston campus.

"According to knowledgeable sources, attorneys for McKee, Berger & Mansueto (MBM) have told the FBI that company officials paid the politicians to whitewash a legislative investigation of a contract they had with the state."

This Boston Globe news story by David Farrell appeared eleven days before McKee and Mansueto had their first interviews with the Boston FBI (or, at least, before the date of the first available Boston FBI interview reports regarding McKee and Mansueto).³⁷

Events Leading to the DiCarlo-MacKenzie Indictments

For the balance of 1975, DiCarlo remained concerned and met frequently with Harrington, Joyce, and Hurley.³⁸ The FBI, in the meantime, was having difficulty putting together a prosecutable case. The case essentially had come down to a "one-on-one" contest, so far as DiCarlo was concerned: The only testimony linking DiCarlo directly to MBM money was McKee's account of DiCarlo's somewhat oblique statements at the Gaslight Club in New York in 1972. If DiCarlo, as expected, were to testify and deny McKee's account, a conviction would be something less than a certainty. The FBI tried to get Daniel Shields to corroborate McKee's testimony, but Shields would not cooperate.³⁹

³⁴ DiCarlo 4/26/79 interview at 17.

³⁵ DiCarlo testimony, Sp. Comm. 6/3/80 at 17-19; MacKenzie testimony, 6/4/80 at 4-5.

³⁶ David Farrell, "2 Investigated in Whitewash of UMass Probe," Boston Globe, June 12, 1975.

³⁷ See report dated 6/27/75 of interviews of Gerald R. [sic] McKee, Jr. and Anthony [E.] Mansueto conducted by FBI Special Agent Robert E. Sheehan on 6/23/75.

³⁸ DiCarlo testimony, Sp. Comm. 6/3/80 at 10-14.

³⁹ Shields 8/16/79 interview at 8; DiCarlo 4/26/79 interview at 3.

By the beginning of 1976, thus, there did not appear to be a prosecutable case, and DiCarlo and MacKenzie have both testified that they were relieved to learn of that fact from Harrington and/or Joyce.⁴⁰ In interviews with Commission staff, Harrington and Joyce denied that they had any source of "inside information" in the FBI, the United States Attorney's Office, or the Justice Department.⁴¹

Later in 1976, the status of the case changed. Shields came to agree with McKee that DiCarlo had come to New York in 1972, gone to the Gaslight Club, and made statements reflecting annoyance that MBM had been late in meeting monetary commitments.⁴²

Armed with this corroboration from Shields, the United States Attorney's Office sought and obtained indictments of DiCarlo and MacKenzie for violations of the Hobbs Act and other related crimes.⁴³ The indictments were returned on August 12, 1976.

The indictments mentioned a "John Doe" -- later identified to be State Senate Ways & Means Committee Chairman James A. Kelly, Jr.⁴⁴ -- as an unindicted co-conspirator.⁴⁵ That apparently did not come as a complete surprise to Kelly, since he allegedly told DiCarlo in advance about the forthcoming indictments.⁴⁶

⁴⁰ DiCarlo testimony, Sp. Comm. 6/3/80 at 11, 13; MacKenzie testimony, Sp. Comm. 6/4/80 at 5-6.

⁴¹ Notes of 4/24/79 interview of Thomas Joyce by Special Commission staff, at 7; interview of Kevin B. Harrington by Special Commission staff.

⁴² Shields testimony 15 DiC 2/14/77 at 89-94, 141-144, 153-156.

⁴³ Indictment, United States v. Joseph J.C. DiCarlo and Ronald C. MacKenzie, Cr. no. 76-339-S (D. Mass. August 12, 1976) for violation of 18 U.S.C. s.1951 (Hobbs Act), conspiracy to commit extortion and extortion; violation of 18 U.S.C. s.371, conspiracy to violate the Travel Act; and violation of 18 U.S.C.ss.1952 and 2, interstate travel to aid in unlawful activity.

⁴⁴ Opening statement by Assistant United States Attorney Edward J. Lee, reproduced at 25 DiC 1/25/77 at 3.

⁴⁵ Indictment, United States v. DiCarlo, MacKenzie, at 4, 9.

⁴⁶ DiCarlo testimony, Sp. Comm. 6/3/80 at 21.

The DiCarlo-MacKenzie Trial

The DiCarlo-MacKenzie trial before Federal District Judge Walter J. Skinner and a jury began on January 25, 1977 and lasted for 21 trial days. The major witnesses were MBM President McKee (who testified for five days); MBM Vice Presidents Mansueto (two days), Thomas (two days), and Shields (one day); MBM salesman Harding (two days); and attorney Endicott Peabody (two days).

McKee, Thomas, and Harding all testified about delivering envelopes containing cash to MacKenzie.⁴⁷ Financial records and testimony showed how MBM generated cash on the relevant dates.⁴⁸ Harding and McKee testified that MacKenzie was given the cash because MacKenzie had said that it was DiCarlo's price for issuing a legislative investigative report that would not harm MBM.⁴⁹ The MBM witnesses testified that \$40,000 was given to MacKenzie in that connection.⁵⁰

The evidence presented against DiCarlo was considerably less compelling. There were no witnesses who testified about giving money directly to DiCarlo. Nor did any witnesses testify about conversations directly with DiCarlo in which DiCarlo demanded or agreed to accept any money. No one even testified about discussions directly with DiCarlo about altering the legislative report.

⁴⁷ McKee testimony, 5 DiC 1/31/77 at 56-83; Thomas testimony, 11 DiC 2/8/77 at 70; Harding testimony, 12B DiC 2/9/77 at 23-24, 39-40, 46-48.

⁴⁸ Testimony of former MBM accountant Sylvester Novelline, 13 DiC 2/10/77 at 100-125; testimony of former MBM comptroller Andrew Serell, 13 DiC 2/10/77 145-171; various exhibits.

⁴⁹ Harding testimony, 12B DiC 2/9/77 at 21; 13 DiC 2/10/77 at 3, 23; McKee testimony, 4 DiC 1/27/77 at 74, 79.

⁵⁰ See McKee testimony, 4 DiC 1/27/77 at 80-114; 5 DiC 1/31/77 at 8-83, 86.

Essentially the only testimony that linked DiCarlo to the case was (1) the testimony of McKee and Peabody about a meeting at DiCarlo's house in February 1971; (2) testimony by Mansueto about a meeting with State Senator James A. Kelly, Jr. in Florida on March 17, 1971; and (3) testimony by McKee and Shields about a trip that DiCarlo made to New York in 1972.

As to the February 1971 meeting, McKee and Peabody testified that they went to DiCarlo's house to try to avert a legislative investigation of MBM's UMass/Boston contract or, at least, to assure MBM a fair hearing.⁵¹ They testified that DiCarlo was harsh and unsympathetic, expressing an intention to use the projected investigation to hurt Lieutenant Governor Donald R. Dwight, who had awarded the contract to MBM and whom, according to McKee and Peabody, DiCarlo said he regarded as a political rival.⁵²

Mansueto testified that he met with Senator Kelly in West Palm Beach, Florida on March 17, 1971, and that Kelly said that DiCarlo would not hurt MBM if DiCarlo were given \$100,000.⁵³ DiCarlo was not alleged to have been present.

Finally, McKee and Shields testified that DiCarlo came to New York (with MacKenzie) on July 6, 1972 -- two months after MBM had completed the final installment on the \$40,000 of payments to buy off DiCarlo.⁵⁴ They testified that DiCarlo complained that MBM had been slow in making payments and that if MBM wanted DiCarlo's help in the future, MBM would have to be more prompt.⁵⁵

⁵¹ McKee testimony, 3 DiC 1/26/77 at 126-134; 6 DiC 2/1/77 at 138-159. Peabody testimony 7 DiC 2/2/77 at 171-182; 8 DiC 2/3/77 at 79-82, 88.

⁵² McKee testimony, 3 DiC 1/26/77 at 132; Peabody testimony, 7 DiC 2/2/77 at 175-177.

⁵³ Mansueto testimony, 9 DiC 2/4/77 at 43-50.

⁵⁴ McKee testimony, 5 DiC 1/31/77 at 73-78, 83-86; Shields testimony, 15 DiC 2/14/77 at 87-93.

⁵⁵ McKee testimony, 5 DiC 1/31/77 at 76, 83-85; Shields testimony, 15 DiC 2/14/77 at 93.

These three types of testimony against DiCarlo were even more attenuated than they appear here, since Judge Skinner instructed the jury that the first two types of testimony could not be considered for their truth, but only to determine whether McKee had reason to be in an extortion-induced fearful state of mind when he authorized the alleged cash payments for DiCarlo.⁵⁶ As to the alleged July 6, 1972 meeting in New York, the defense presented witnesses in an attempt to persuade the jury that DiCarlo and MacKenzie could not have been in New York at the time that McKee and Shields had testified.⁵⁷

The government did not present evidence of dramatic changes in the DiCarlo-Sirianni Committee report about MBM. The government attempted to show that a page of self-serving statements drafted by McKee was added to the report, but the government did not mention any damaging language in an earlier draft that was removed on account of payments for DiCarlo.⁵⁸

DiCarlo and MacKenzie elected not to testify in their own defense. MacKenzie has indicated to the Commission that if he had testified at the DiCarlo-MacKenzie trial, he would have admitted helping MBM in various ways and accepting small contributions at various times from MBM -- but he would have denied receiving \$40,000 or having participated in an extortion of MBM.⁵⁹ DiCarlo's trial lawyer has told Commission staff (pursuant to a waiver of attorney-client privilege by DiCarlo)⁶⁰ that he believed that MacKenzie's intended testimony at the DiCarlo-MacKenzie trial would have resulted in both defendants being convicted, and that DiCarlo had to agree not to testify if MacKenzie were to agree not

⁵⁶ Instructions by the Court, 4 DiC 1/27/77 at 47-48, 76-77; 15 DiC 2/14/79 at 43; 17 DiC 2/16/77 at 162-164.

⁵⁷ Testimony of former Massachusetts Senate parliamentarian Norman L. Pidgeon, 19 DiC 2/18/77 at 26-46; testimony of former State Senator John J. Conte, 21 DiC 2/23/77 at 49 ff; testimony of former New York City taxi driver Lloyd George Murray, 21 DiC 2/23/77 at 10 ff.

⁵⁸ After the government completed its case in chief, a defense witness, Frederick Kussman, presented what he said was an earlier draft of the report. See 20 DiC 2/22/77 at 135-149. The government, which had not seen that draft prior to the trial, did not emphasize the language in that draft which could have been harmful to MBM.

⁵⁹ MacKenzie interview.

⁶⁰ Release and waiver of attorney-client privilege dated April 12, 1979, executed by Joseph J.C. DiCarlo, and directed to attorneys Walter J. Hurley and Thomas M. Joyce.

to testify.⁶¹ DiCarlo's decision not to testify was, according to attorney Hurley, completely voluntary on DiCarlo's part and made with considerable relief by DiCarlo.⁶²

Although the defense placed great emphasis on evidence tending to show that a Gaslight Club meeting in New York could not have occurred on July 6, 1972,⁶³ the judge's charge to the jury did not clearly preclude the defendants from being found guilty if the jury concluded that a meeting of the type described took place on some other date.⁶⁴ Moreover, the judge instructed the jury that it did not have to find a classic extortion -- i.e., McKee having been put in fear by DiCarlo -- in order to find DiCarlo and MacKenzie guilty of Hobbs Act violations. The judge explained that the word "extortion" as used in the Hobbs Act is a term of art which is defined by the statute to include not only a classic extortion but also a public official's acceptance of money to which the official is not legally entitled, with the payments occurring in connection with the official's use of his public office.⁶⁵

The jury found DiCarlo and MacKenzie guilty on all eight counts on which each had been indicted.⁶⁶ DiCarlo and MacKenzie each received a sentence of one year in prison and a \$5,000 fine.⁶⁷ MacKenzie resigned from the State Senate following his conviction, and DiCarlo -- who reportedly "said that 2,000 years

⁶¹ Hurley 4/24/79 interview at 5-6.

⁶² DiCarlo has told Commission staff that he was eager to testify. DiCarlo 12/8/78 interview at 12.

⁶³ See Final Arguments of Defense Counsel, DiC 2/24/77 at 36-43.

⁶⁴ Charge to the jury, 23 DiC 2/24/77 at 78-80.

⁶⁵ Id. at 69-77. See 18 U.S.C. s.1951(b)(2).

⁶⁶ See docket sheets, United States v. DiCarlo, MacKenzie Cr. no. 76-339-1, 2-S.

⁶⁷ Judgment and Commitment Order, United States v. DiCarlo, Cr. no. 76-339-S (D. Mass., 1977), filed March 29, 1977; Judgment and Commitment Order, United States v. MacKenzie, Cr. no. 76-339-S (D. Mass., 1977), filed March 29, 1977.

ago another innocent man was wrongfully convicted"⁶⁸ -- was expelled after refusing to resign from the State Senate.⁶⁹

Post-Trial Proceedings
And Allegations

Although the DiCarlo-MacKenzie trial generated considerable publicity, it was nothing compared to what resulted from post-trial proceedings and allegations initiated by the convicted state senators. During the trial, the only politicians whose names were mentioned prominently were DiCarlo, MacKenzie, and unindicted co-conspirator Kelly. After the trial, however, the names of Senate President Kevin Harrington, Boston Mayor Kevin White, and former Governor Francis Sargent became linked, directly or indirectly, with MBM. Some of the major allegations are considered in this section of the Commission's Report.

Senators DiCarlo and MacKenzie were found guilty by the federal jury on February 25, 1977.⁷⁰ The convictions were appealed, primarily upon the argument that DiCarlo's actions in connection with the DiCarlo-Sirianni legislative investigative committee were not prosecutable by virtue of "legislative privilege."⁷¹ The panel of the United States Court of Appeals for the First Circuit unanimously rejected the "privilege" argument and affirmed the DiCarlo-MacKenzie convictions with an opinion issued on November 11, 1977.⁷²

Even before their direct appeal had been denied, DiCarlo and MacKenzie jointly filed a new trial motion.⁷³ The motion, filed on November 9, 1977 before the trial judge (Judge Skinner), was accompanied by affidavits containing,

⁶⁸ David Farrell, "The Sad Case of Joe DiCarlo," Boston Globe, April 13, 1980.

⁶⁹ Id. DiCarlo resigned as Senate Majority Leader on February 28, 1977. MacKenzie resigned from the Senate on March 31, 1977. Journal of the Senate, 1977, I, at 337. DiCarlo was expelled from the Senate on April 4, 1977. Journal of the Senate, 1977, I, at 347.

⁷⁰ See docket sheets, United States v. DiCarlo, MacKenzie, Cr. no. 76-339-1, 2-S.

⁷¹ Defendants' Appeal from Conviction, United States v. DiCarlo, MacKenzie, nos. 77-1165, 77-1166.

⁷² United State v. DiCarlo, MacKenzie, 565 F.2d 802 (1st Cir. 1977). The United State Supreme Court denied certiorari on March 20, 1978, as reported at 435 U.S. 924 (1978).

⁷³ Defendants' Motion for a New Trial, United States v. DiCarlo, MacKenzie, Cr. nos. 76-339-1, 2-S (D. Mass. November 9, 1977).

among other things, allegations relating to Harrington and Sargent.⁷⁴ The papers were impounded by the court.⁷⁵

On December 23, 1977 the impoundment order was lifted and the motion papers, including the affidavits, thereafter were made public.⁷⁶ The motion was filed for DiCarlo and MacKenzie by their new attorneys, Francis J. DiMento and Earle C. Cooley. The motion charged that DiCarlo's and MacKenzie's trial lawyers had had conflicts of interest, resulting in inadequate defenses being presented for DiCarlo and MacKenzie.⁷⁷

Specifically, the motion said,⁷⁸ in part:

"The conflict of interests and inadequate defense appear from the following facts:

"Attorney Walter J. Hurley, trial counsel for the defendant DiCarlo, was and is employed by, or associated in the practice of law with, Attorney Thomas M. Joyce. Mr. Joyce was and is the attorney, political advisor and close friend and associate of former Governor Francis W. Sargent and Senate President Kevin B. Harrington.

"At the insistence of Messrs. Hurley and Joyce, the defendant MacKenzie was persuaded not to retain Attorney Earle C. Cooley as trial counsel, but to retain instead Attorney Robert V. Mulkern, who would follow the leadership of Mr. Hurley and Mr. Joyce.

"During the course of the trial, evidence developed which indicated that MBM, the alleged victim of the crimes charged to the defendants, had made cash payments to Senate President Harrington and, through Albert P. Manzi and/or William V. Masiello, to former Governor Sargent (a) after the award of Phase I of the contract to MBM, (b) during MBM's performance of Phase I, (c) during a period when MBM sought and obtained contract modifications and (d) prior to the award of Phase II of the contract, which MBM was actively seeking.

74 The new trial motion referred specifically to an impounded lobby conference in which a June 26, 1975 FBI interview of Jack Thomas was presented. Thomas had revealed an MBM payment of \$2,000 to Kevin Harrington in October 1970, and MBM payments of \$10,000 in October 1970 and \$10,000 in May 1972 to Albert Manzi, a fundraiser for Governor Sargent. 6 DiC 2/1/77 at 29-49. See also affidavit dated November 4, 1977 executed by William R. DiMento, Exhibit G to the New Trial Motion.

75 Motion for Impoundment, United States v. DiCarlo, MacKenzie nos. 77-1165, 77-1166 (1st Cir. November 9, 1977).

76 See docket sheets, United States v. DiCarlo, no. 76-339-1-S; docket sheets, United States v. MacKenzie, no. 76-339-2-S. The allegations contained in the motion papers were made in a hearing on the motion in open court on December 23, 1977. The motion papers were apparently not made public until December 29, 1977. See article by Robert J. Rosenthal, Boston Globe, December 30, 1977 at 1.

77 Defendants' Motion for a New Trial, United States v. DiCarlo, MacKenzie, at 2.

78 Id. at 2-4. Citations and outline captions omitted.

"It therefore became immediately apparent, especially in view of all the other circumstances and evidence in the case, that defense counsel, in order to properly and effectively advance their political contribution-defense, should develop evidence not merely that MBM was the willing victim of the defendants' alleged extortionate scheme but that MBM had, in fact, corruptly purchased the award of Phase I of the contract, protection during its performance and the reasonable likelihood of an award of Phase II, by payments to Harrington and to Sargent through Manzi and Masiello; and that any alleged payments to or in behalf of the defendants were political contributions that could not have been induced by fear or under color of official rights, since MBM knew that its interests in the UMass. project were already fully secured by the payments previously made to Sargent and Harrington.

"In spite of the trial court's expressed willingness to permit such evidence and trial counsels' assurances to the defendants that such evidence would be used, trial counsel did not in fact exploit the evidence, but instead merely elicited from MBM's officers and employees that political contributions had been made to unidentified recipients in Massachusetts during the years 1970 and 1972...."

Beyond the allegations that MBM had made cash payments to Harrington and Sargent, the new trial motion further alleged that DiCarlo's and MacKenzie's trial lawyers had "failed and refused" to offer "[e]vidence that Attorney Endicott Peabody was not at the Revere home of defendant DiCarlo on Thursday, February 18, 1971, in the company of Gerald A. [sic] McKee, as alleged, but rather visited the DiCarlo home alone on Sunday, February 21, 1971." In essence, this aspect of the DiCarlo-MacKenzie post-trial motion was accusing former Governor Peabody and MBM President McKee of perjury, since each one's testimony had prominently included mention of the other's being present at DiCarlo's home at the February 1971 meeting.⁷⁹ The testimony of the meeting was allowed by Judge Skinner only on the issue of McKee's state of mind⁸⁰ -- yet the new trial motion was saying that McKee had not even been at the meeting.

The new trial motion further alleged that --

"During the course of the investigation of this case and prior to trial, it was brought to the attention of defense counsel that William V. Masiello, if called as a witness on behalf of the defendants, would testify that, in August of 1971, Anthony Mansueto, a principal of MBM and a government witness at the trial, told Masiello that he, Mansueto, had just paid \$120,000 in cash to former Governor Endicott

⁷⁹ See e.g., McKee testimony, 3 DiC 1/26/77 at 126-134; 6 DiC 2/1/77 at 138-140, 145-146, 152; Peabody testimony, 7 DiC 2/2/77 at 171-181; 8 DiC 2/3/77 at 79-80.

⁸⁰ See 3 DiC 1/26/77 at 125.

Peabody, who was also a witness for the government at the trial.

"If called by the defendants, Masiello would have further testified that he received a draft copy of the [DiCarlo-Sirianni] Committee report from its author, Frederick Kussman, delivered the original to the defendant DiCarlo and covertly delivered a copy to Mansueto; and that the delivery to Mansueto occurred in September, 1971, notwithstanding testimony of Gerald McKee that he first received a draft copy of the report on October 14, 1971, from the defendant Mackenzie.

"Although the foregoing information was brought to the attention of both defense counsel, Masiello was not timely called as a witness by either defense counsel. ... When defense counsel argued to the court the unavailability of Masiello, the trial court and the prosecutor both offered to use the resources of the government to obtain Masiello's appearance at the trial as a witness for the defense. Defense counsel, however, did not accept the offer of assistance. ..."

The new trial motion contained additional allegations, as well.

Before discussing the disposition of the DiCarlo-Mackenzie new trial motion, it may be useful to consider briefly the substance of the allegations that were contained in the motion. As to alleged MBM payments to Harrington and to Manzi/Masiello for Sargent, those are discussed in Appendix F to this Final Report. The only alleged payment to Harrington was, as discussed, made by check, not in cash.⁸¹ The charge that Peabody went alone to DiCarlo's house has been reviewed in Chapter VII.⁸² As discussed, there is evidence tending to support Peabody's and McKee's testimony that McKee was present along with Peabody, and the Commission is not aware of any evidence, other than DiCarlo's testimony, that McKee did not attend the February 1971 meeting.⁸³ The Commission makes no credibility determination.

As to the "\$120,000 allegation" involving Peabody, the Commission

⁸¹ See discussion in Appendix F to this Final Report.

⁸² See discussion in Chapter VII supra.

⁸³ DiCarlo testimony, Sp. Comm. 4/7/80 at 29. DiCarlo told the Commission that members of his immediate family would have agreed with his testimony. DiCarlo 12/8/78 interview at 4. DiCarlo also presented the Commission with evidence tending to show that Peabody's description of DiCarlo's house described the house not as it was in 1971, but as it was after remodeling in 1974. Such evidence is of little or no value in determining whether McKee was present in February 1971 (although DiCarlo argued that it reflected Peabody's lack of credibility in general). DiCarlo has admitted that Peabody, at least, was at DiCarlo's house in February 1971. DiCarlo testimony, Sp. Comm. 4/7/80 at 29.

investigated that matter intensively, including successfully litigating in the Massachusetts Supreme Judicial Court the question of whether Peabody could be compelled to produce all of his records related to MBM Massachusetts activities.⁸⁴ The Commission spent months reviewing all available MBM financial records and correspondence, and the Commission conducted numerous interviews related to that allegation. The Commission found no evidence to support the allegation that Peabody was given \$120,000 or any other amount in cash in 1971 or at any other time by MBM. Moreover, William Masiello denied, in testimony before the Commission, that he had heard such a thing from Mansueto or told such a thing to the DiCarlo investigator who filed the only affidavit on the subject in connection with the DiCarlo-MacKenzie new trial motion.⁸⁵

As to Masiello's alleged unavailability to the defense during the DiCarlo-MacKenzie trial, Judge Skinner offered to ask the FBI to try to locate Masiello for the defense, and the defense counsel demurred.⁸⁶ In 1980 Masiello acknowledged, in testimony to the Commission, that he had "duck[ed] a subpoena" to testify at the DiCarlo-MacKenzie trial.⁸⁷ Masiello did not explain why he ducked the subpoena, but he testified that shortly after the DiCarlo-MacKenzie trial concluded he was offered \$50,000 in cash by State Senator James A. Kelly, Jr. and Worcester Civic Center Commissioner Peter Consiglio to move out of

⁸⁴ Ward v. Peabody, Supreme Judicial Court S-2072. In litigating the matter before the Commission and in the courts, Commission counsel was required to set forth the allegations under investigation to which the documents could possibly be relevant. Commission counsel clearly and properly identified the allegations as allegations. See, e.g., Sp. Comm. 11/9/79 at 54; transcript of oral argument in Ward v. Peabody 12/4/79 at 20-21.

⁸⁵ William Masiello testimony, Sp. Comm. 6/24/80 at 44-46. When Endicott Peabody appeared before the Commission, he asked the Commission to "clear" him, then and there, of the \$120,000 allegation. Opening statement by Endicott Peabody, Peabody testimony, Sp. Comm. 6/18/80 at 4-10. The Commission could not do so because it had not concluded its investigation of the matter and, in particular, was awaiting testimony from Mansueto. Mansueto was scheduled to testify before the Commission on June 25, 1980; he declined to appear. See Sp. Comm. 6/27/80 at 4-5. The Commission, moreover, is not in a position to "clear" someone on an issue of this nature. As stated in the text, the Commission found no evidence to support the \$120,000 allegation.

⁸⁶ See bench conference, 20 DiC 2/22/77 at 102-105.

⁸⁷ William Masiello testimony, Sp. Comm. 5/13/80 at 98.

Massachusetts so that he would not be amenable to subpoenas.⁸⁸

The DiCarlo-MacKenzie motion for a new trial was denied by District Judge Skinner on January 17, 1978.⁸⁹ Judge Skinner, who rejected DiCarlo's and MacKenzie's request for an evidentiary hearing on the motion,⁹⁰ took --

"judicial notice of the fact that [the DiCarlo-MacKenzie trial lawyers] Hurley and Mulkern are attorneys of good reputation; that Hurley in particular is a specialist in the defense of criminal cases in both state and federal courts, and has had particular experience in cases charging public officials with corrupt acts, including Hobbs Act cases; and that Hurley and Mulkern have previously worked as co-counsel in the defense of criminal cases.... These matters were called to the attention of present defense counsel [DiMento and Cooley], who agreed as to the accuracy of the above.

. . .

"Defense counsel [Hurley and Mulkern] stated [in bench conferences during the trial] that they considered the question of MBM's [alleged political contribution] activities important but that the names [of the alleged recipients] weren't important. The Assistant United States Attorney made it clear that if the matter were pursued, it was likely that the names of the alleged payees would be brought out 'in order to make the record clear from the government's point of view.' ...

"Thereafter defense counsel pressed the question of MBM's political contributions at every stage of the cross-examination of MBM's witnesses, at great length and in great detail. At any point, the names of Harrington and Manzi could have come out through the witnesses or on redirect examination.

"... Present counsel say that it was also incumbent on [trial] counsel to bring out the names of Harrington, Sargent, Kelley [sic] and White as recipients of payments. The defendants' directions [to their trial counsel] were not so explicit. I find that reasonable attorneys could differ with present counsel as to the unmixed blessings which would accrue to the defendants if they themselves attempted to involve other well-known political figures in the case....

"Defendants also say that trial counsel should have made greater attempts to find the ubiquitous Masiello and put him on the stand. In my view, given that Masiello was trying to avoid testimony, and would be reluctant and possibly hostile, ... prudent counsel might well consider that to expose him to cross-examination by the United States Attorney would be foolhardy....

⁸⁸ Id. at 98-100.

⁸⁹ Memorandum and Order on Motion for a New Trial, United States v. DiCarlo, MacKenzie, (D. Mass., January 17, 1978).

⁹⁰ The request was made and argued at pages 2 through 5 of Defendants' Memorandum (filed December 22, 1977) in Support of Motion for New Trial. Judge Skinner noted the denial at page 3 and pages 6-7 of his Memorandum and Order on Motion for a New Trial (January 17, 1978).

"...It was my observation that the defense [at trial] was conducted by counsel with ingenuity and vigor. Every reasonable motion was presented and objection taken. Interrogation and argument were forceful, thorough and skilled.

"Upon a complete review of the record, I am satisfied that the defendants were well represented [at trial] by able and loyal counsel."

Judge Skinner rejected the other arguments raised by DiCarlo and MacKenzie in the new trial motion. Judge Skinner neither discussed nor (as previously mentioned) held an evidentiary hearing about the \$120,000 allegation involving Peabody. Judge Skinner also denied DiCarlo's and MacKenzie's motion for bail and stay of execution, and he ordered them surrendered for imprisonment forthwith.⁹¹ DiCarlo and MacKenzie began serving their prison sentences on the following day.⁹² They sought a stay of execution of the sentence, and their motion for stay was unanimously denied by the panel of United States Court of Appeals for the First Circuit on January 24, 1978 (with an unpublished opinion).⁹³

DiCarlo and MacKenzie appealed the denial of their new trial motion, and the panel of the United States Court of Appeals for the First Circuit unanimously affirmed the judgment by Judge Skinner.⁹⁴ The appeals court, in its opinion,⁹⁵ noted that --

"Defendants [DiCarlo and MacKenzie] selected Hurley precisely because Joyce had political connections. Such connections are not simplistic, but extend in many directions. The least defendants could expect was the possibility of some interface. The least that, in turn, could be expected of defendants would be to make their own decisions when some such matters surfaced. Defendants were in no respect naive or unsophisticated. Nothing was concealed from them, including the fact that day after day the trial was proceeding without their counsel disclosing the names to the jury. They do not excite our sympathy when, having lost their case, they malign their counsel, and say they were put upon. Defendants have failed to allege or establish a real conflict of interest or any actual prejudice."

⁹¹ Memorandum and Order on Motion for a New Trial, United States v. DiCarlo, MacKenzie (D. Mass. January 17, 1978) at 12.

⁹² See Alan Sheehan article, Boston Globe, January 18, 1978, at 1.

⁹³ Memorandum and Order, United States v. DiCarlo, MacKenzie, no. 77-1165, 77-1166, 78-1026 (1st Cir. January 24, 1978).

⁹⁴ United States v. DiCarlo, MacKenzie, 575 F.2d 952 (1st Cir. 1978).

⁹⁵ Id. at 957-58.

The appeals court rejected in a footnote⁹⁶ DiCarlo's and MacKenzie's argument about the failure to procure Masiello to testify at their trial:

"Defendants also complain of their counsels' failure to accept the government's offer to locate one William Masiello and secure his presence at the trial.... Quite apart from the fact that Masiello's purported testimony was supplied only by a hearsay affidavit, the court found that he would have been a dangerous witness ('foolhardy') for the defendants to call. We agree with the court that the failure to call Masiello in no way prejudiced the defendants."

The First Circuit also found no merit in the other arguments that DiCarlo and MacKenzie had advanced in their new trial motion. No mention was made of the \$120,000 allegation.

DiCarlo and MacKenzie sought review, by the Supreme Court of the United States, of the First Circuit's judgment regarding the new trial motion.⁹⁷ Such review was denied on October 2, 1978.⁹⁸

Although DiCarlo's and MacKenzie's direct appeal and new trial motion met with no legal success, they generated an avalanche of press coverage and demands for investigations.⁹⁹ There also were allegations in the press in January and February 1978 to the effect that the legislature's Joint Legislative Committee on Post Audit and Oversight had abruptly terminated an investigation of MBM's UMass/Boston contract in 1973 as a result of pressure from Endicott Peabody.¹⁰⁰ Those allegations led to the formation of a subcommittee of the Post Audit and Oversight Committee to investigate that question and related matters.¹⁰¹ Chaired by Rep. Gerald M. Cohen (D-Andover), the Post Audit Subcommittee held 24 days of hearings (some private) and attracted considerable press coverage. In the meantime, independent investigations relating to MBM were

⁹⁶ Id. at 956, n.3 (citations omitted).

⁹⁷ Petition for Writ of Certiorari, DiCarlo, MacKenzie v. United States, no. 77-1797, filed June 19, 1978.

⁹⁸ Notification of denial of certiorari by United States Supreme Court, October 2, 1978, DiCarlo, MacKenzie v. United States, no. 77-1797.

⁹⁹ See, e.g. Boston Globe articles daily from December 23, 1977.

¹⁰⁰ See article by Robert J. Rosenthal and Robert L. Turner, Boston Globe, January 19, 1978, at 1; excerpts of the report by Post Audit Bureau auditor Joseph A. Davey published in Boston Sunday Globe, January 22, 1978; Robert J. Rosenthal article, Boston Globe, February 3, 1978.

¹⁰¹ P.A. Report at 1-4. See also article by Robert J. Rosenthal, Boston Globe, February 1, 1978, at 1.

being conducted by the State Attorney General, the State Auditor, and the Governor's Legal Counsel.¹⁰² In April of 1978, legislation was enacted establishing the present Commission to conduct a comprehensive investigation of matters related to MBM, with the Commission being given discretionary jurisdiction to investigate other matters as well.¹⁰³

Attempts to Induce MacKenzie
Not to Implicate DiCarlo

In testimony before the Commission, Ronald MacKenzie stated that on three occasions -- first, before the DiCarlo-MacKenzie trial; secondly, after the trial and convictions, in connection with a new-trial motion; and, thirdly, shortly before MacKenzie was to testify before this Commission -- Joseph DiCarlo attempted to induce MacKenzie to commit perjury in regard to accepting cash from MBM and/or sharing MBM cash with DiCarlo. Further, MacKenzie testified that DiCarlo offered inducements -- ranging from cash for MacKenzie to a job for MacKenzie's wife if MacKenzie were convicted -- to try to persuade MacKenzie to commit such perjury. MacKenzie's testimony on these matters, except that concerning the offer of a cash inducement, was corroborated in large part by DiCarlo in testimony to the Commission. The testimony regarding each of the three occasions will be considered in turn.

The First Occasion. According to both DiCarlo and MacKenzie, there was a private meeting of DiCarlo and MacKenzie shortly after the indictments were handed down by the federal grand jury in 1976.¹⁰⁴ DiCarlo and MacKenzie agree that the discussion included the observations that the indictment contained no allegation that anyone from MBM had given money directly to DiCarlo -- and

¹⁰² The Attorney General's investigation was announced January 5, 1978. See article by Robert L. Turner and Robert J. Rosenthal, Boston Globe, January 6, 1978 at 1. The State Auditor's investigation apparently began on January 23, 1978. See Robert J. Rosenthal article, Boston Globe, January 23, 1978 at 5. The investigation by the Governor's chief counsel Max Volterra began on January 20, 1978, according to Volterra, quoted in an article by Robert J. Rosenthal, Boston Globe, January 24, 1978 at 3.

¹⁰³ Commonwealth of Massachusetts, Resolves, c.5 (1978).

¹⁰⁴ MacKenzie testimony, Sp. Comm. 6/4/80 at 7-8. DiCarlo testimony, Sp. Comm. 6/3/80 at 38.

that the only theory reflected by the indictment as to how money could have gone from MBM to DiCarlo was through the intermediation of MacKenzie (who was charged in the indictment with having received cash for DiCarlo from MBM officials).¹⁰⁵ DiCarlo had reason to be concerned that MacKenzie might elect to avoid trial by becoming a government witness and testifying about handing MBM cash to DiCarlo, because -- as both DiCarlo and MacKenzie testified to the Commission -- (1) DiCarlo knew that MacKenzie had in fact handed MBM cash to DiCarlo,¹⁰⁶ and (2) DiCarlo knew that MacKenzie had been visited earlier in 1976 by two FBI agents who had offered MacKenzie immunity in return for MacKenzie's testimony against DiCarlo.¹⁰⁷ And it is, of course, obvious that DiCarlo's chances of avoiding conviction would have been enhanced if MacKenzie had admitted receiving cash from MBM but had denied giving any of the MBM cash to DiCarlo.

Thus, according to MacKenzie's testimony to the Commission, DiCarlo asked -- and offered to pay -- MacKenzie to give false testimony at the DiCarlo-MacKenzie trial to the effect that MacKenzie did not give to DiCarlo any of the cash that MacKenzie had received from MBM.¹⁰⁸ MacKenzie told the Commission that DiCarlo offered not only a "significant ... lump sum of money" for such perjured testimony, but also "some job security for [MacKenzie's] family."¹⁰⁹

DiCarlo, as previously mentioned, admitted to the Commission that he and MacKenzie discussed the fact that MacKenzie was the only person who could provide testimony, consistent with the indictments, about handing MBM cash to DiCarlo.¹¹⁰

¹⁰⁵ MacKenzie testimony, Sp. Comm. 6/4/80 at 7-8; DiCarlo testimony, Sp. Comm. 6/3/80 at 39, 41-42.

¹⁰⁶ DiCarlo testimony, Sp. Comm. 6/3/80 at 36, 116; MacKenzie testimony, Sp. Comm. 5/28/80 at 41-42, 44-45, 49-50.

¹⁰⁷ DiCarlo testimony, Sp. Comm. 6/3/80 at 31-33; MacKenzie testimony, Sp. Comm. 6/4/80 at 6-7.

¹⁰⁸ MacKenzie testimony, Sp. Comm. 6/4/80 at 7-8.

¹⁰⁹ Id. at 8.

¹¹⁰ DiCarlo testimony, Sp. Comm. 6/3/80 at 41-42.

Further, DiCarlo admitted before the Commission¹¹¹ that he had discussed with Senate President Harrington the fact that only MacKenzie could put MBM money into DiCarlo's hands and that

"if it were to come about that Senator MacKenzie were to be convicted and I not, that I would imagine like it might have been within the Senate or amongst ourselves that Senator MacKenzie's wife would have some type of a job or something to be able to live off while Senator MacKenzie -- if he were and I not convicted.... If he had gone away a job would have been provided in order to support his family or whatever."

DiCarlo testified to the Commission, however, that he did not offer MacKenzie money or a promise of a job for MacKenzie's wife if MacKenzie would testify at the DiCarlo-MacKenzie trial that MacKenzie had never given MBM cash to DiCarlo.¹¹²

The Second Occasion. After DiCarlo and MacKenzie were tried and found guilty, there was a private conversation between DiCarlo and MacKenzie about the projected joint new-trial motion.¹¹³ According to both DiCarlo and MacKenzie, DiCarlo and MacKenzie discussed the possibility of MacKenzie's executing an affidavit, which DiCarlo knew would be false, stating that MacKenzie had given no MBM cash to DiCarlo.¹¹⁴ Further, both DiCarlo and MacKenzie testified that MacKenzie did execute such a perjured affidavit, in DiCarlo's State House Office.¹¹⁵ DiCarlo testified that he took custody of the false affidavit.¹¹⁶ DiCarlo testified, further, that he had given the false MacKenzie affidavit to attorney Francis DiMento.¹¹⁷ DiCarlo told the Commission that he would not willingly instruct DiMento to produce the false affidavit.¹¹⁸ When the Commission indicated that it would consider issuing a

¹¹¹ Id. at 44-46, 49; see also 64-67.

¹¹² Id. at 39-41.

¹¹³ DiCarlo testimony, Sp. Comm. 6/3/80 at 70; MacKenzie testimony, Sp. Comm. 6/4/80 at 9.

¹¹⁴ MacKenzie testimony, Sp. Comm. 6/4/80 at 9-10; DiCarlo testimony, Sp. Comm. 6/3/80 at 70-76.

¹¹⁵ DiCarlo testimony, Sp. Comm. 6/3/80 at 78, 85-86; MacKenzie testimony, Sp. Comm. 6/4/80 at 10.

¹¹⁶ DiCarlo testimony, Sp. Comm. 6/3/80 at 87.

¹¹⁷ Id.

¹¹⁸ Id. at 89.

summons for the document, attorney DiMento said that his best memory was that the false affidavit had been destroyed after MacKenzie's attorney had learned about it.¹¹⁹

The Third Occasion. MacKenzie testified that in approximately March of 1980, he had a private meeting with DiCarlo at which time DiCarlo informed MacKenzie that DiCarlo had decided to tell the truth to the Commission.¹²⁰ MacKenzie said that DiCarlo called MacKenzie a few days after that meeting and asked for another meeting, at which DiCarlo said that he had changed his mind about his proposed testimony to the Commission because he (DiCarlo) could not bring himself to admit that he had taken as much as \$11,500 from MBM.¹²¹ Further, MacKenzie said that DiCarlo offered to pay MacKenzie if MacKenzie would falsely testify to the Commission that MacKenzie had given only "a rather insignificant amount" of MBM cash to DiCarlo.¹²²

DiCarlo admitted, in testimony before the Commission in June of 1980, that he had two meetings with MacKenzie in the spring of 1980 concerning testimony before the Commission.¹²³ DiCarlo admitted that, during the first of those two meetings with MacKenzie, he had told MacKenzie that he had decided to "admit having received money" from MacKenzie.¹²⁴ DiCarlo's testimony about the second meeting is confusing. DiCarlo admitted that he told MacKenzie that he (DiCarlo) could not state that he had received a substantial amount of money from MBM, but he denied that he offered MacKenzie money if MacKenzie would misrepresent the amount of money that he had given DiCarlo.¹²⁵

After the spring 1980 meetings with MacKenzie, DiCarlo did testify to the Commission that he had accepted \$11,500 in MBM cash from MacKenzie.¹²⁶ DiCarlo

¹¹⁹ Statement of attorney Francis J. DiMento, Sp. Comm. 6/3/80 at 89.

¹²⁰ MacKenzie testimony, Sp. Comm. 6/4/80 at 10.

¹²¹ Id. at 10-11.

¹²² Id. at 11.

¹²³ DiCarlo testimony, Sp. Comm. 6/3/80 at 79-81.

¹²⁴ Id. at 82.

¹²⁵ Id. at 82-84.

¹²⁶ Id. at 116.

was testifying pursuant to an immunity order which DiCarlo had unsuccessfully opposed in Supreme Judicial Court.¹²⁷ DiCarlo testified:¹²⁸

"I have been told by my counsel that Mr. MacKenzie has stated that \$11,500.00 had been given to me by him. Without that information from my attorney, Mr. Chairman, I would have testified to substantially less than that figure."

DiCarlo further testified that "not one penny of that [MBM cash] went into my pocket."¹²⁹ DiCarlo explained that he used the funds "as expenses for the conduct of my political office and political organization" including paid political advertisements in local newspapers for organizations such as the United Fund, Heart Fund, Boy Scout Week, and Girl Scout Week; and to sponsor a Little League baseball team, a youth peewee hockey team, and to buy spiritual bouquets.¹³⁰ Thus, DiCarlo testified, "I didn't then nor do I now consider it to have been dishonest" to accept the money from MBM.¹³¹

¹²⁷ See Sp. Comm. 4/7/80 at 4-5.

¹²⁸ DiCarlo testimony, Sp. Comm. 4/7/80 at 12.

¹²⁹ Id. at 12, 14.

¹³⁰ Id. at 13-14.

¹³¹ Id. at 13.

CHAPTER IX

THE MANZI-MASIELLO TRIAL IN 1979

In April of 1978, Albert P. ("Toots") Manzi and William V. Masiello were indicted by the Commonwealth of Massachusetts on charges related to MBM. After a month-long non-jury trial in 1979, Manzi and Masiello were acquitted. During the following year, Masiello admitted -- in testimony before the Commission -- that he had perjured himself when he testified at the Manzi-Masiello trial. Masiello added that Manzi had also committed perjury. The present chapter discusses the Manzi-Masiello trial in light of the additional information available to the Commission.

Events Preceding
the Manzi-Masiello Trial

In 1975, during interviews with the FBI, MBM officials told of illegal cash payments that they had made in 1970 and 1972 to Albert P. Manzi.¹ The MBM officials said that the 1970 payment was voluntary, but that the 1972 payment was extorted from them.² The United States Attorney's Office in Massachusetts did not pursue the matter. Instead, it forwarded the information, in 1977, to the Massachusetts State Attorney General's Office.³

On January 11, 1978 the First Assistant Attorney General reportedly stated that the Attorney General's Office was investigating MBM's alleged 1972 payment of \$10,000 in cash to Masiello for Manzi.⁴ It was unclear to

¹ Report dated 6/27/75 of interview of Gerald R. [sic] McKee, Jr. conducted on 6/23/75 by FBI Special Agent Robert E. Sheehan; report dated 6/27/75 of interview of Anthony [E.] Mansueto conducted on 6/23/75 by FBI Special Agent Robert E. Sheehan; report dated 6/30/75 of interview of Jack S. Thomas conducted on 6/26/75 by FBI Special Agent Robert E. Sheehan.

² McKee 6/23/75 FBI interview; Mansueto 6/23/75 FBI interview.

³ See letter dated January 24, 1978 from Massachusetts Attorney General Francis X. Bellotti to United States Attorney Edward F. Harrington. Attorney General Bellotti was quoted in the Boston Globe as saying that he was given access to the information and documents by federal prosecutors in the spring of 1977. Article by Robert L. Turner and Robert J. Rosenthal, Boston Globe, January 6, 1978, at 1.

⁴ Article by Robert J. Rosenthal, Boston Globe, January 12, 1978.

some members of the press at the time whether the "targets" of the investigation were MBM officials or Manzi and Masiello.⁵ On January 17, 1978 a Massachusetts state grand jury indicted MBM and MBM President Gerald McKee, Jr. for alleged tax violations unrelated to the Manzi-Masiello matter.⁶ Shortly thereafter, the press reported that the Attorney General was suggesting that a special commission be created to investigate matters relating to MBM, including how MBM obtained the UMass/Boston contract.⁷

After further investigation of the 1972 transaction, the Attorney General concluded that it would be appropriate to give non-prosecution agreements to MBM officials in return for their cooperation in various matters, including the investigation and trial of the alleged extortion of MBM in 1972 by Manzi and Masiello. The formal non-prosecution letter,⁸ dated March 14, 1978, stated that the non-prosecution status for MBM officials was

"predicated upon the assumption that Gerald R. [sic] McKee, Jr., Anthony Mansueto, Jack Thomas and any other past or present employee of McKee, Berger and Mansueto voluntarily furnish representatives of the Attorney General's Office complete cooperation in securing documents, witnesses, and all

⁵ See, e.g., Carol Surkin, "State House Watch: Why Won't Bellotti Go After Pols?" Boston Globe, January 22, 1978, Focus section.

⁶ Indictment, Commonwealth v. Gerald McKee, Jr., Cr. no. 016679 (Super. Ct. January 17, 1978) for 17 counts of wage withholding tax violations, G.L. c.62B, s.11C; Indictment, Commonwealth v. McKee, Berger & Mansueto Inc. [sic], Cr. no. 016706 (Super. Ct. January 17, 1978) for 17 counts of wage withholding tax violations, G.L. c.62B, s.11C.

⁷ See e.g., article by Robert L. Turner, Boston Globe, January 31, 1978.

⁸ Letter dated March 14, 1978 from Massachusetts Attorney General Francis X. Bellotti to William F. Looney, Jr. and Paul F. Markham, concerning a non-prosecution agreement for Gerald R. [sic] McKee, Jr., Anthony Mansueto, Jack Thomas, et al.

other related matters and provide complete and truthful information concerning the aforementioned incidents and willingly appear and testify truthfully at any grand jury proceedings and at any future trials and at any and all other official proceedings in a manner consistent with preserving the integrity of the Attorney General's ongoing criminal investigation."

On April 28, 1978, Manzi and Masiello were indicted by a state grand jury for actions in connection with MBM's alleged \$10,000 payment to Masiello for Manzi in May of 1972.⁹ They were charged with having extorted the money, in violation of G.L. c.265 s.25. In addition, they were charged with illegally soliciting or receiving money for political purposes, in violation of G.L. c.55 s.11.

On May 2, 1978 a hearing was held in Superior Court, before Judge John T. Ronan, at which the Commonwealth sought to have a \$10,000 bail requirement imposed on Manzi and Masiello. An assistant attorney general explained:¹⁰

"[B]ail is being requested in this case for the defendants Manzi and Masiello, because the facts underlying the indictments have national implications....

"The Commonwealth intends to introduce facts at the trial of the defendants that will demonstrate a joint criminal enterprise on the part of Manzi and Masiello in 1972 to raise five hundred thousand dollars in cash for the purpose of delivering the money to former President Richard M. Nixon, either shortly before the Republican National Convention, or at the convention in order to influence Nixon's decision in substituting the then Secretary of Transportation John A. Volpe as the Republican vice presidential candidate, instead of the then vice president Spiro Agnew.

"In order to raise a portion of this \$500,000 the firm of McKee, Berger and Mansueto and its key principals were extorted by the defendants...."

⁹ Indictment, Commonwealth v. Albert Manzi and William V. Masiello, Cr. no. 018334 (Super. Ct. April 28, 1978) for violation of G.L. c.55 s.11, illegal political contributions; Indictment, Commonwealth v. Albert Manzi, Cr. no. 019125-019127 (Super. Ct. April 28, 1978) for 3 counts of violation of G.L. c.265 s.25, extortion; Indictment, Commonwealth v. William V. Masiello, Cr. no. 019122-019124 (Super. Ct. April 28, 1978) for 3 counts of violation of G.L. c.265 s.25, extortion.

¹⁰ Arraignment proceedings, May 2, 1978, Commonwealth v. Masiello, Manzi, at 3-4.

Judge Ronan denied the request that bail be imposed.¹¹ Trial before Judge Joseph R. Nolan began on February 12, 1979.¹²

The Trial and Acquittals

The Manzi-Masiello trial was heard by Judge Nolan without a jury; the defendants chose to be tried by the judge rather than by a jury.¹³ The case consumed 26 trial days, including seven days of testimony by Anthony Mansueto (a former MBM Vice President working, in 1979, for a different firm in Detroit),¹⁴ four days of testimony by Gerald McKee, Jr. (MBM President), and two days of testimony by Jack S. Thomas (a former MBM Vice President working in 1979 for a different firm in Kuwait).¹⁵

The critical questions in the Manzi-Masiello trial were (1) what happened at the Parker House on May 18, 1972, and (2) what was the disposition of \$10,000 in cash that MBM generated on May 23, 1972. Those topics have been discussed at some length in Chapter V, above. For present purposes, it should be sufficient to note that Anthony Mansueto testified at the Manzi-Masiello trial that he received a series of telephone calls from Manzi and Masiello requesting -- and then demanding -- cash from MBM in satisfaction of "commitments" that MBM had to fulfill.¹⁶ Jack Thomas said that he received calls of the same nature from Masiello.¹⁷ Gerald McKee, Jr. said that he did not receive any such calls

¹¹ Id. at 6, 8.

¹² Commonwealth v. Masiello, Manzi, 1 M/M 2/12/79 at 3.

¹³ Statements in open court by William V. Masiello and Albert P. Manzi, 1 M/M 2/12/79 at 7-8.

¹⁴ Mansueto testimony, 2 M/M 2/13/79 at 33.

¹⁵ Thomas testimony, 9 M/M 2/23/79 at 30.

¹⁶ Mansueto testimony, 2 M/M 2/13/79 at 64-67, 71-74, 77-82, 105-106, 109, 113-131, 136-137, 139-160.

¹⁷ Thomas testimony, 9 M/M 2/23/79 at 58-67.

directly, but that Mansueto and Thomas reported to McKee about the calls they had received.¹⁸ McKee and Mansueto testified that a meeting took place on May 18, 1972 at the Parker House's downstairs restaurant where Manzi heatedly told McKee and Mansueto that unless MBM met its "commitments," by paying \$25,000 in cash, Manzi would see to it that MBM was thrown off the UMass/Boston project and out of Massachusetts altogether.¹⁹ McKee and Mansueto testified that Masiello, who was present during the entire discussion, indicated that MBM should pay the money.²⁰ McKee and Mansueto further testified that after the meeting they decided to give \$10,000 to Manzi.²¹ Jack Thomas testified that he procured the \$10,000 in cash and handed it, in an envelope, to William Masiello while Masiello sat in an automobile at Copley Square on May 23, 1972.²²

Although McKee and Mansueto testified in detail about the Parker House meeting -- even to the point of who sat where around the table -- they said that they were unable to recall or explain why Mansueto had written on a Parker House credit card charge slip for the same day the names or initials of McKee, Mansueto, Masiello, and BBC official Frederick Kussman.²³ The serial number on that charge slip was only one digit away from the one on the charge slip on which Mansueto had written the names or initials of McKee, Mansueto, Masiello, and Manzi.²⁴

¹⁸ McKee testimony, 12 M/M 3/1/79 at 40-41.

¹⁹ McKee testimony, 12 M/M 3/1/79 at 63-66; Mansueto testimony, 2 M/M 2/13/79 at 191-199. The prosecution presented evidence that BBC Project Engineer James J. Cusack had provided Manzi with information critical of MBM's performance at UMass/Boston and that Manzi mentioned, at the Parker House meeting, that he could use Cusack against MBM.

²⁰ McKee testimony, 12 M/M 3/1/79 at 65; Mansueto testimony, 2 M/M 2/13/79 at 197.

²¹ McKee testimony 12 M/M 3/1/79 at 72; Mansueto testimony, 3 M/M 2/14/79 at 14, 23-24.

²² Thomas testimony, 9 M/M 2/23/79 at 76-94.

²³ Mansueto testimony, 4 M/M 2/15/79 at 179-180; McKee testimony, 13 M/M 3/6/79 at 100-101.

²⁴ Mansueto testimony, 2 M/M 2/13/79 at 177-178; exhibits.

Moreover, although Mansueto testified that Manzi had said that MBM's "commitment" was to contribute toward a \$500,000 cash "kitty" which would be given to President Nixon to induce Nixon to substitute former Governor John A. Volpe for Spiro T. Agnew as Nixon's 1972 Vice Presidential running mate,²⁵ no other witness at the trial testified that Manzi had said such a thing,²⁶ and Volpe took the stand to deny that he had authorized or had knowledge of such a fund.²⁷ In addition, Mansueto's testimony about what the money ultimately was for had to be considered in light of other evidence -- not mentioned by Mansueto or McKee -- that Manzi, a fundraiser for then-Governor Francis W. Sargent, was holding a fundraising event for Sargent on May 21, 1972.²⁸

Both of the defendants testified in their own defense. Manzi testified that he had met with McKee and Mansueto at the Parker House downstairs restaurant in the spring of 1972 but that Masiello was not present at any time during the meeting.²⁹ Manzi described the meeting as innocuous -- no more than an exchange of pleasantries.³⁰ Masiello testified that he had met with McKee

²⁵ Mansueto testimony, 2 M/M 2/13/79 at 123.

²⁶ McKee testified at the trial that Mansueto had told him that the money Manzi was seeking was for the \$500,000 cash "kitty" (McKee testimony, 12 M/M 3/1/79 at 57), and McKee specifically testified to the Commission that Manzi had not told McKee at the May 18, 1972 meeting or at any other time that the money was for Volpe (McKee testimony, Sp. Comm. 6/26/80 at 75).

²⁷ Testimony of John A. Volpe, 20 M/M 3/16/79 at 178-179.

²⁸ See memorandum dated May 18, 1972 from "Appointments" to Governor [Francis W. Sargent], re: Schedule for Sunday, May 21, 1980; Manzi testimony, 18 M/M 3/14/79 at 63-65; testimony of Francis W. Sargent, 21 M/M 3/19/79 at 25; cf. Mansueto testimony, 6 M/M 2/20/79 at 89-91.

²⁹ Manzi testimony, 18 M/M 3/14/79 at 53-54, 57.

³⁰ Id. at 56; 19 M/M 3/15/79 at 69.

and Mansueto at the Parker House downstairs restaurant in May of 1972 but that Manzi was not present at any time during the meeting.³¹ Masiello denied having received any money from Jack Thomas of MBM on May 23, 1972.³² Manzi denied ever receiving any money -- directly or indirectly -- from MBM.³³

The prosecution attempted to demonstrate that Manzi had said, in a pretrial interview attended by a member of the Boston Police, that there had been a meeting involving the foursome of McKee, Mansueto, Manzi, and Masiello in the spring of 1972.³⁴ Moreover, the prosecution presented evidence to try to show that Masiello had attempted to get another witness to go along with a false alibi for Masiello for May 18, 1972.³⁵ To rebut Masiello's alibi for May 23, 1972, the prosecution called some of the individuals whom Masiello claimed to have been with on May 23, 1972 -- and those witnesses denied Masiello's account.³⁶

The prosecution attempted to demonstrate that Manzi was a powerful fundraiser who used persistence, demands, and threats in order to come up with illegal cash "contributions."³⁷ Manzi, by contrast, portrayed himself as someone who did no

³¹ Masiello testimony, 23 M/M 3/22/79 at 59-60, 95, 139.

³² Id. at 134.

³³ Manzi testimony, 18 M/M 3/14/79 at 77-79.

³⁴ Testimony of Robert H. Costello, 15 M/M 3/8/79 at 85, 90. Costello is a Boston police detective assigned to the Attorney General's office.

³⁵ Testimony of Donald Feldman, 23 M/M 3/22/79 at 26-32; Masiello testimony, 24 M/M 3/23/79 at 147-153.

³⁶ Masiello testimony, 23 M/M 3/22/79 at 129-130; 24 M/M 3/24/79 at 136-139, 153-158, 166-174; testimony of John M. Flynn, 26 M/M 3/27/79 at 111-113; testimony of Philip Philbin, 25 M/M 3/26/79 at 28-38; testimony of Edmund F. LePlume, 26 M/M 3/27/79 at 119-120.

³⁷ See generally testimony of Mansueto and McKee. For Manzi's success as fundraiser and political coordinator, see, e.g., Volpe testimony, 20 M/M 3/16/79 at 145, 157; 21 M/M 3/19/79 at 3; Sargent testimony, 21 M/M 3/19/79 at 37-40.

more than occasionally try to sell some tickets to fundraising affairs for worthy politicians and as someone whose philosophy of fundraising was:³⁸

"[D]on't try to push a ticket on anybody unless they wanted to buy it.

. . .

"The only way that we wanted [people] to buy tickets was that they had to give with an open heart."

Having heard all of the evidence, Judge Nolan announced from the bench on March 28, 1979 that he had a reasonable doubt and therefore that he found both Manzi and Masiello not guilty of extortion and not guilty of illegally soliciting/receiving money for political purposes.

Masiello's Admission to the Commission
that Masiello Committed Perjury at the
Manzi-Masiello Trial; Masiello's Allegation
That Manzi Also Committed Perjury at the
Manzi-Masiello Trial; Related Allegations

Masiello's troubles were not over simply because he escaped conviction at the Manzi-Masiello trial. Masiello was subjected to subpoenas and investigations by the federal government and by the Commission.³⁹ After extensive negotiations, immunity-for-truthful-testimony arrangements were worked out with Masiello by the Commission.⁴⁰

Having been granted immunity, Masiello admitted that he had received \$10,000 in cash from MBM's Jack Thomas on May 23, 1972 in exactly the manner that Thomas had testified at the Manzi-Masiello trial.⁴¹ Masiello further admitted that he was present along with Manzi at the Parker House on May 18, 1972.⁴² Masiello said that Manzi had indeed demanded cash from MBM at that meeting, but Masiello added that Manzi had made plain that the cash was for the Sargent-Dwight campaign and that the "commitments" on which MBM was behind were commitments to give cash "contributions" related to the amount that MBM received under the UMass/Boston contract.⁴³ Masiello's testimony on this and related matters is recounted in Chapter V, above.

³⁸ Manzi testimony, 19 M/M 3/15/79 at 32-33.

³⁹ Notes of 1/2/80 interview of William V. Masiello by Special Commission staff, at 7.

⁴⁰ Order Concerning Grant of Immunity to William V. Masiello pursuant to Chapter 11 of the Resolves of 1979, Supreme Judicial Court, NP. 79-507, December 19, 1979. See Sp. Comm. 5/12/80 at 6.

⁴¹ William Masiello testimony, Sp. Comm. 6/24/80 at 62-64.

⁴² Id. at 52-54.

⁴³ Id. at 55-57.

Masiello also told the Commission in an interview that Manzi had lied at the Manzi-Masiello trial about the May 18, 1972 meeting at the Parker House, about not having received MBM cash through Masiello, and about other matters.⁴⁴ Moreover, Masiello said that an agreement had been worked out, before the Manzi-Masiello trial, by Masiello and Manzi -- through an intermediary -- that Masiello and Manzi would each deny that the other had been present at the Parker House when McKee and Mansueto were there in May of 1972, even though they both knew that such denials were false.⁴⁵

The Commission attempted to persuade Manzi, through his attorneys, to tell the truth in exchange for immunity. No agreement was reached, and Manzi was not granted State immunity. Manzi was "summoned" to appear and testify before the Commission, but Manzi refused to appear, citing ill health. The Commission brought suit to enforce the summons, and the Court found -- in accordance with the report of a Court-appointed physician -- that Manzi was physically capable of testifying.⁴⁶ Manzi appeared before the Commission on June 9, 1980 and asserted his privilege against self-incrimination.⁴⁷ In so doing, Manzi refused to answer even those questions that he had answered under oath at the Manzi-Masiello trial.⁴⁸

⁴⁴ Notes of 1/2/80 interview of William V. Masiello by Special Commission staff, at 3.

⁴⁵ Id. at 3-4.

⁴⁶ Order, Ward v. Manzi, June 4, 1980 (Super. Ct.; Brady, J.).

⁴⁷ Manzi testimony, Sp. Comm. 6/9/80 at 8-9.

⁴⁸ Id. at 6, 8.

CHAPTER X

ACTIVITIES IN MASSACHUSETTS OF WILLIAM F. HARDING
AND DANIEL J. SHIELDS AT TIMES WHEN THEY WERE NOT
WORKING FOR MBM

In this chapter, evidence is summarized concerning activities in Massachusetts of William F. Harding and Daniel J. Shields at times when they were not working for MBM. As has previously been discussed in this Report,¹ Harding and Shields joined MBM in late August or early September of 1971 when the firm that Harding and Shields had been affiliated with -- Mauchly Construction Management, Inc. -- was acquired by MBM. Shields became President of MBM in February 1973, with McKee moving up to Chairman of the Board of MBM and President of MBM's parent company, International Management Services, Inc. On July 15, 1973, Shields was discharged by MBM. Harding remained with MBM until July 6, 1974, at which time he was discharged. In late 1974, Harding and Shields helped to organize a new firm, Project Construction Management, Inc. ("PCM"), which obtained several public contracts in Essex County, Massachusetts.²

Why The Commission Has Investigated
The Activities in Massachusetts of
Harding and Shields at Times When
Harding and Shields Were Not Working for MBM

As discussed in Chapter I of this Report, the Commission was mandated to investigate matters relating to MBM, particularly in relation to MBM's UMass/Boston contract. The Commission was given discretion to determine which other matters to investigate, so long as those matters concerned state or county building-related contracts awarded on or after January 1, 1968.³

There are several reasons why the Commission elected to investigate activities of Harding and Shields at times when those gentlemen were not working for MBM. First, although the Legislature did not specifically mandate such an investigation, several legislators -- including the two sponsors of the Resolve which established the Commission -- indicated that they felt this was a matter that the Commission should look into. During the hearing before the Legislature's Joint Committee on the Judiciary regarding the creation of the Commission, Rep. Francis Hatch (R-Beverly), the House

¹ See Chapter II supra.

² See discussion infra.

³ See the more complete discussion in Chapter I supra.

Minority Leader, stated:⁴

"MBM's first cousin, PBM [sic, should read "PCM,"] has been [in] my home county of Essex County. We never built the courthouse, but the county treasurer went to court successfully to fight their hiring [.] [Q]uery, how did they get in there. What were the ramifications. These are the kind of questions that I hope the Blue Ribbon . . . Commission will address because it is perfectly clear that it needs special talent. It needs investigative help. It needs a lot of time by people who presently aren't equipped to do it, and I here and now salute Rep. Cohen [Chairman of the Post Audit Subcommittee investigating MBM]. He has done yeoman work, but I think he would be the first to admit that he is not prepared to embark on the kind of investigatory process that is needed, and that is why I hope very much that your committee will act favorably and speedily on this proposal."

Representative Philip Johnston (D-Marshfield), one of the sponsors of the Resolve establishing the Commission, stated at the same hearing:⁵

"If the commission is to determine whether or not payoffs are routine within our building and construction program, it must have the authority to examine contracts other than the MBM contract. Questions have been raised about a number of other state and county contracts, including the Essex County courthouse....."

And Representative Andrew H. Card, Jr. (R-Holbrook), the other original sponsor of the Resolve, said:⁶

"I do not think the scope of the legislation should be drafted in a more limiting fashion than this is right now. The reason for this is there are other construction projects which I know of, which I think should be reviewed and investigated."

"One project would be in Essex county, the Essex County Courthouse project....."

In addition to these statements by members of the Legislature, there was considerable public interest in the means that PCM utilized to obtain contracts in Essex County, as evidenced by articles in several newspapers.⁷

Finally, in order to comply with its mandate to investigate MBM's activities in Massachusetts, the Commission felt that it was important to learn as much as possible about MBM. In view of MBM President McKee's statements during interviews with Commission staff that MBM had not been a politically oriented firm except during the period

⁴ Commonwealth of Massachusetts, Hearing before the Joint Committee on the Judiciary re: the creation of a Blue Ribbon Commission as proposed in House Bill No. 4632, held March 23, 1978, at 109.

⁵ Id. at 60.

⁶ Id. at 76.

⁷ See Bill Wasserman, "A History of Corruption," North Shore Sunday, June 8, 1980.

when Shields and Harding were associated with MBM,⁸ it seemed necessary to look into Shields's and Harding's activities so that the actions of McKee and Mansueto could be distinguished. In previous chapters of this Report the evidence available to the Commission about McKee and Mansueto has been discussed at length. In the present chapter, the Commission reports the evidence presented to it concerning Harding and Shields.

Activities of Harding and Shields
in Massachusetts
Prior to Joining MBM

William Harding and Daniel Shields began working for MBM in the fall of 1971, when the company with which they had been affiliated -- Mauchly Construction Management, Inc. (MCM) -- was acquired by MBM.⁹ Harding had joined the predecessor of MCM -- Mauchly Associates, Inc. -- in 1965 or 1966,¹⁰ and Shields came to Mauchly in November, 1968.¹¹ By 1969, Harding was Vice President for Marketing & Sales,¹² and Shields was Senior Vice President of Mauchly.¹³ When Mauchly was divested by its parent company in mid-1970, Shields became President of the spun-off company (MCM).¹⁴ Mauchly and MCM were frequently in financial difficulty, making the pursuit of new business a high priority.¹⁵

Mauchly/MCM won several public contracts in Massachusetts prior to 1968. Among those were contracts for critical path method ("CPM") computerized construction scheduling work on projects at UMass/Amherst, including the administration building, the graduate research center, the first and second additions to Bartlett Hall, and the

⁸ McKee 6/18/79 interview at 6-7; McKee 8/30/79 interview at 1-2; see memorandum dated June 4, 1973 from Brad (L. Bradford) Perkins to Gerald McKee, Jr., concerning goals and trends within MBM, at 1-2, 4, 6.

⁹ See discussion in Chapter II supra.

¹⁰ See SRC Technology Group Change of Status Form dated Nov. 21, 1969 for William F. Harding, indicating that he was hired in May 1966; ledger sheet found in Mauchly Associates files indicating that he was hired in October 1965.

¹¹ Mauchly Associates Payroll Information Form for Daniel J. Shields, starting date Nov. 10, 1968.

¹² Harding 11/21/69 Change of Status Form.

¹³ Organization chart dated Oct. 1969, attached to interoffice communication dated Sept. 29, 1969 from Project Management Division of Mauchly Associates.

¹⁴ Shields testimony, Sp. Comm. 6/2/80 at 8.

¹⁵ See, e.g., interview of Robert K. Stern by Special Commission staff, at 1. See also financial statement of Mauchly Construction Management, Inc. from August 1, 1970 to July 31, 1971, prepared by Laventhol Krekstein Horwath & Horwath, at 1-3, 5.

addition to Machmer Hall.¹⁶

In 1966 (prior to the DMJM contract), Mauchly did CPM work on Holyoke Community College,¹⁷ and the firm began working on the medical school project at UMass/Worcester in 1967, being awarded a series of contracts eventually worth more than \$160,000.¹⁸ The Commission has not investigated the pre-1968 contracts.

From 1968 until its acquisition by MBM in 1971, Mauchly/MCM won additional public contracts in Massachusetts. Mauchly was awarded CPM contracts for phases I-VI of the Treatment, Training and Research Center in 1968.¹⁹ Mauchly had at least two sub-contracts from MBM, one for CPM updating on the Newton High School and one on the new public health laboratory and boiler plant in Jamaica Plain.²⁰ Starting in 1969,

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- ¹⁶ Letter dated April 21, 1965 from BBC Director Horace M. Chase to Mauchly Associates, announcing the award of a consulting contract for CPM services on Mass. State Project B63-1, Administration Building, University of Massachusetts, at an estimated contract value of \$18,300; letter dated January 18, 1967 from BBC Director Horace M. Chase to Mauchly Associates, announcing the appointment of Mauchly as CPM consultant on Mass. State Project No. U-63-4 #1, addition to Machmer Hall, UMass/Amherst, at an estimated contract value of \$16,300; letter dated January 23, 1967 from Horace M. Chase to Mauchly Associates, announcing the appointment of Mauchly as CPM consultant on Mass. State Project No. U64-2, first addition to Bartlett Hall, classroom, laboratory and office building, UMass/Amherst, at an estimated contract value of \$16,350; letter dated August 2, 1967 from Horace M. Chase to Mauchly Associates, announcing the appointment of Mauchly as CPM consultant on Mass. State Project No. U64-3, graduate research building, UMass/Amherst, at an estimated contract value of \$38,000; letter dated July 25, 1968 from Horace M. Chase to Mauchly Associates, announcing the appointment of Mauchly as CPM Consultant on Mass. State Project No. U64-2 #2, second addition to Bartlett Hall, at an estimated contract value of \$19,875.
- ¹⁷ Letter dated August 15, 1966 from Horace M. Chase to Mauchly Associates, announcing the appointment of Mauchly as CPM consultants on Mass. State Project EJ64-1 #3, renovation of main building, Holyoke Regional Community College, with an expected contract value of \$11,480.
- ¹⁸ Letter dated April 7, 1967 from Horace M. Chase to Mauchly Associates, awarding a contract for CPM consultant services on Mass. State Project U66-3, clinical science building and 400-bed hospital, UMass/Worcester, expected contract value of \$24,770. Contract No. 442 dated September 16, 1968 between the BBC and Mauchly Associates, for CPM consultant services on phases I-V of the UMass/Worcester Medical School Project, with an expected contract value of \$125,325.
- ¹⁹ Contract #422 between the BBC and Mauchly Associates dated August 29, 1968 for CPM consultant services on Mass. State Project M-64-15, Treatment, Training and Research Center, Boston, expected contract value \$49,145.
- ²⁰ See, e.g., Mauchly invoice #1112 dated October 29, 1971 for CPM updates on Newton High School, MBM #470-022; Mauchly invoice #1111 dated October 29, 1971 for CPM updates on New Public Health Laboratory Building (Jamaica Plain), MBM # 470-020.

Mauchly/MCM won a series of contracts from the Massachusetts Port Authority including a contract for planning, scheduling, and coordination of construction activities and tenant relocations for the Logan International Airport's temporary South Terminal; similar contracts for the permanent South Terminal; a design management contract for South Terminal; a cost consulting contract for South Terminal; and a cost consulting contract for the Volpe International Terminal.²¹ These Massport contracts were worth a total of approximately \$175,000.²² At about the time of the acquisition by MBM, MCM sought a contract at Massport that MCM thought would be worth approximately \$800,000,²³ but MCM/MBM's application for the contract was not accepted.²⁴ In 1970, MCM obtained a contract from the city of Boston Public Facilities Department for work at Boston City Hospital.²⁵

²¹ Proposal dated August 27, 1969 from William F. Harding for Mauchly Associates to Massport Executive Director Edward J. King, for planning, scheduling and coordination of construction activities and tenant relocations for South Terminal Temporary Facilities, Logan Airport, expected value of \$22,025, signed and accepted by Edward J. King, September 10, 1969. Proposal dated November 4, 1969 for planning, scheduling and coordination of design activities, South Terminal Project, Logan Airport, expected value of \$9,405, signed and accepted by Edward J. King, Jan. 29, 1970. Proposal dated June 12, 1970 for design management services on the South Terminal Project, Logan Airport, expected value of \$26,600, verbal approval given July 10, 1970, signed and accepted by Edward J. King, August 17, 1970. Proposal dated July 13, 1970 with supplement dated July 23, 1970 for cost consulting servicing the International Terminal, Logan Airport, expected value of \$25,000, verbal approval July 27, 1970, work authorization signed by Massport Chief Engineer T.H. Kuhn on August 29, 1970. Proposal dated July 15, 1970, for cost consulting on the South Terminal Project, Logan Airport, expected value of \$24,500, signed and accepted by Edward J. King on October 16, 1970. Proposal dated June 30, 1970, resubmitted September 8, 1970 for planning, scheduling and coordination of construction, South Terminal Project, Logan Airport, expected contract value of \$69,040, verbal approval by T.H. Kuhn on December 29, 1970.

²² There may have been additional contracts; Massport's records were poorly organized, and most of the information presented in the preceding footnote comes from correspondence and copies of Massport checks found in Mauchly's files.

²³ Mauchly proposal submitted in December 1971 for project management services on the new South Terminal, Logan Airport, expected contract value \$800,000.

²⁴ Testimony of Daniel Shields, Sp. Comm. 6/5/80 (private) at 8-9; testimony of William Harding, Sp. Comm. 6/5/80 (private) at 13; interview of Thomas H. Kuhn by Commission staff, 2/14/80 at 7-8.

²⁵ See letter dated September 8, 1970 from Robert T. Kenny (Boston Public Facilities Director) to Hon. Kevin H. White re: MCM contract for scheduling and coordinating construction activities for the residential and parking facilities at Boston City Hospital. Mauchly/MCM received other contracts from the Department of Public Facilities, including 1968 contracts for work at the District 11 Police Station and at the John Marshall School in Dorchester. See letter dated Nov. 13, 1968 from Director Malcolm E. Dudley to Hon. Kevin H. White regarding those contracts.

Mauchly's sales efforts in Massachusetts during the late 1960s and early 1970s were handled mainly by William Harding, with assistance as needed from Daniel Shields.²⁶ In Massachusetts, as in other states, Mauchly/MCM was often assisted in its sales efforts by non-employees who received "finder's fees" when their activities led to the acquisition of contracts.²⁷ These non-employees in several instances were people who knew government officials who could be helpful in Mauchly/MCM's pursuit of public contracts.²⁸ Mauchly/MCM's principal "finder" in Massachusetts was an insurance salesman named Russell E. Dodds, who lived across the street from William Harding in Concord.²⁹ Dodds worked for the same insurance agency as State Senator Ronald C. MacKenzie,³⁰ and Dodds and MacKenzie considered themselves close friends.³¹ Dodds introduced Harding to MacKenzie in 1968 or 1969,³² and MacKenzie was receptive to Harding's discussions of CPM and to the request that he provide introductions for Mauchly.³³

In the fall of 1969, a formal agreement was executed between Mauchly and "Russell E. Dodds Associates." The agreement provided:³⁴

"Pursuant to our recent conferences regarding your firm's association with Mauchly Associates, Inc., this is to confirm our agreement to compensate Russell E. Dodds Associates for its efforts on behalf of Mauchly Associates, Inc.'s Project Management Division for obtaining new contracts."

"We agree to compensate your firm on a mutually agreed upon percentage basis of the contract amount to us on each contract involving our services on which your firm aided Mauchly Associates in obtaining the contract."

The agreement between Mauchly and "Dodds Associates" did not specify what percentage the "finder's fees" would be. According to Harding, the reason for the lack of specificity was that the percentage would vary with the size of contracts won. For certain

²⁶ Shields testimony, Sp. Comm. 6/5/80 (private) at 405.

²⁷ Harding testimony, Sp. Comm. 6/4/80 at 13-15.

²⁸ Id. at 14; Harding interviews by Commission staff; Shields interviews by Commission staff.

²⁹ Harding testimony, Sp. Comm. 6/4/80 at 9, 19.

³⁰ Testimony of Ronald MacKenzie, Sp. Comm. 5/28/80 at 10.

³¹ Id.; testimony of Russell E. Dodds, Sp. Comm. 3/28/80 (private) at 5.

³² MacKenzie testimony, Sp. Comm. 5/28/80 at 12-14; Harding testimony, Sp. Comm. 6/4/80 at 11.

³³ MacKenzie testimony, Sp. Comm. 5/28/80 at 12-15; Harding testimony, Sp. Comm. 6/4/80 at 22-23.

³⁴ Letter dated October 3, 1969 from William F. Harding (for Mauchly Associates) to Russell E. Dodds (for Russell E. Dodds Associates), with Dodds's signature indicating acceptance. See Harding testimony, Sp. Comm. 6/4/80 at 19; Dodds testimony, Sp. Comm. 12/19/80 (private) at 13-14.

contracts, a "finder's fee" as high as five percent would be awarded, but in other cases it might have to be less. ³⁵

MacKenzie was successful in providing introductions for Mauchly/MCM which resulted in public contracts, and "finder's fees" ranging from \$500 to \$2,500 were paid by Mauchly/MCM "Russell E. Dodds Associates." ³⁶ According to Dodds, the "finder's fees" were shared with MacKenzie. ³⁷ MacKenzie says that he received money from Dodds that Dodds said had come from Mauchly, but that the money was paid in satisfaction of other debts that Dodds owed to MacKenzie. ³⁸

Harding and MacKenzie had a friendly relationship which continued after MCM was acquired by MBM. ³⁹ MacKenzie apparently first got involved in the DiCarlo situation as a means of helping Harding impress Harding's new employer (MBM). ⁴⁰ Even after the DiCarlo-MacKenzie "extortion" of MBM, ⁴¹ MBM continued to try to obtain contracts through introductions by MacKenzie. ⁴²

³⁵ Harding testimony, Sp. Comm. 6/4/80 at 13.

³⁶ Dodds testimony, Sp. Comm. 3/28/80 at 5-6; 12/19/80 at 5-10; Harding testimony, Sp. Comm. 6/5/80 at 11-12; Shields testimony, Sp. Comm. 6/5/80 (private) at 6-8; checks including \$500 MCM check #1015 dated 10/9/70 on account at O'Hare International Bank, Ill.; \$500 MCM check #1565 dated 3/17/71 on account at the same bank; \$500 MCM check #174 dated 5/14/71 on account at Chase Manhattan Bank, New York.

³⁷ Dodds testimony, Sp. Comm. 3/28/80 at 6; 12/19/80 at 8-10.

³⁸ MacKenzie testimony, Sp. Comm. 12/19/80 (private) at 7, 13-15.

³⁹ MacKenzie testimony, Sp. Comm. 5/28/80 at 7; see Harding testimony, Sp. Comm. 6/4/80 at 35 and passim.

⁴⁰ Id.

⁴¹ See discussion in Chapters VII and VIII, supra.

⁴² See memorandum dated August 15, 1972 from Jack S. Thomas to G. McKee, Jr. re: Lahey Clinic; cf. memorandum dated September 4, 1974 from Thomas to McKee re: St. Thomas Airport.

Efforts by Harding and Shields to Win Public Contracts
Through Essex County Commissioner Daniel J. Burke

While working for Mauchly/MCM, William Harding pursued public contracts from Essex County, Massachusetts. Harding's pursuit of Essex County contracts continued after MCM was acquired by MBM. Indeed, Harding's attempts to win Essex County work continued even after Harding left MBM in 1974. The present section discusses the evidence presented to the Commission concerning these Essex County contracts.

Initial Contacts
Between Harding and Burke

William Harding of Mauchly/MCM first met Essex County Commissioner Daniel J. Burke in 1969 or 1970.⁴³ Burke was an attorney who had been elected to four-year terms as an Essex County Commissioner in 1960, 1964, and 1968.⁴⁴ Burke was subsequently re-elected to an additional four-year term in 1972. He was unsuccessful in his 1976 re-election campaign.⁴⁵

Burke has testified that he recalls being introduced to Harding by Paul Gaudet.⁴⁶ Gaudet was an Essex County employee (Assistant Dog Officer) who acted in some respects as an assistant to Burke.⁴⁷ Harding is not sure whether he met Burke directly or through Gaudet.⁴⁸

43 Harding testimony, Sp. Comm. 6/4/80 at 56. Testimony of Daniel Burke, Sp. Comm. 3/12/80 at 7.

44 Commonwealth of Massachusetts, P.D. 43 Massachusetts Election Statistics, vols. for 1960, 1964, 1968.

45 Id. vols. for 1972, 1976.

46 Burke testimony, Sp. Comm. 3/12/80 at 6-7.

47 Alan White, "He Blew Whistle on County," Lawrence Eagle Tribune, June 8, 1980. Burke testimony, Sp. Comm. 3/12/80 at 7; testimony of Daniel Shields, Sp. Comm. 6/5/80 at 5-6; testimony of William Harding, Sp. Comm. 6/4/80 at 55. Gaudet's wife Barbara served as campaign treasurer for Burke. See endorsement stamp on check dated November 26, 1973 to "Daniel J. Burke Committee," cited infra, and account application papers for "Daniel Burke Committee" in files of Essex County Bank and St. Jean's Credit Union.

48 Harding testimony, Sp. Comm. 6/4/80 at 52, 54.

Harding met quite often with Burke, according to Harding's testimony and contemporaneous expense reports.⁴⁹ Harding also contributed to various fund-raising events for Burke.⁵⁰

Harding was anxious to win contracts related to construction projects that Essex County was contemplating.⁵¹ However, it was not until 1973 -- while Harding was working for MBM -- that Essex County reached the stage of preparing for work on those projects.⁵² MBM was interested in working for Essex County,⁵³ and Harding pursued the potential contracts for MBM.⁵⁴

Harding's focus apparently changed, however, in mid-July 1973. On July 15, 1973 Harding's friend Daniel J. Shields was fired by MBM. On July 16, 1973 Peter T. Pallotta -- who, like Harding and Shields, had joined MBM from Mauchly/MCM --

49 Id. at 56; Burke testimony, Sp. Comm. 3/12/80 at 16-17. Harding expense reports for 1970-1974 indicate that he met 39 times with Burke and/or Gaudet.

50 Harding testimony, Sp. Comm. 6/4/80 at 56; Burke testimony, Sp. Comm. 3/12/80 at 22-24, 29-30, 38. See expense vouchers. See Harding MCM expense report for 12/17/71 "Entertainment & Dinner - Essex County Commissioners: \$250.00.

51 Harding testimony, Sp. Comm. 6/4/80 at 57.

52 Shields testimony, Sp. Comm. 6/5/80 at 9-10.

53 See letter dated September 27, 1971 from Endicott Peabody to Gerald McKee, Jr., concerning MBM contract prospects including Essex County Court House project management contract; handwritten memoranda dated September 9, 1971 and December 1971 by Endicott Peabody, concerning Essex County Court House and the Mauchly firm, then a subsidiary of MBM; memorandum dated September 20, 1971 from Endicott Peabody to his law partner Jeremiah D. Lambert, concerning matters including the Essex County Court House bill; letter dated November 26, 1971 from Endicott Peabody to Gerald McKee, Jr. concerning contract opportunities, including Essex County Court House.

54 Harding testimony, Sp. Comm. 6/4/80 at 66.

also was fired by MBM.⁵⁵ Because of Harding's close association with Shields and Pallotta, Harding had reason to believe that his job at MBM also was in jeopardy.⁵⁶ Accordingly, Harding stepped up his activity in regard to the potential Essex County contracts, but he did so with an eye toward having the contracts awarded to a new company that he and Shields would form.⁵⁷

The MacKenzie-Tully Bill

One of the first matters that had to be resolved if Essex County were to be able to hire a private firm as construction consultant or project manager was the legal authority of the county to engage such a firm. A bill to permit counties to hire such firms was filed in the Massachusetts State Senate on July 31, 1973 by Senators Ronald C. MacKenzie and B. Joseph Tully.⁵⁸ According to MacKenzie, William Harding had asked MacKenzie to file the bill, and MacKenzie did so as an accommodation, with MacKenzie asking Tully to co-sponsor the bill since Tully was a member of the majority party and was Chairman of the Senate Committee on Counties.⁵⁹

The bill was late-filed. That is, it was filed after the normal deadline for filing legislation for the session.⁶⁰ In order to be admitted for consideration on the merits, approval had to be granted by the Joint Committee on Rules.⁶¹ The MacKenzie-Tully bill was approved on August 14, 1973, by action

⁵⁵ See Chapter II supra.

⁵⁶ Harding testimony, Sp. Comm. 6/4/80 at 58.

⁵⁷ Harding testimony, Sp. Comm. 6/4/80 at 58.

⁵⁸ Petition to accompany Senate Bill No. 1872, to authorize county commissioners to hire management consultants, filed July 13, 1973.

⁵⁹ Notes of 5/14/80 interview of Ronald C. MacKenzie by Special Commission staff, at 1.

⁶⁰ The normal filing deadline is the first Wednesday in December. Commonwealth of Massachusetts, Rules of the Senate, House of Representatives, and Joint Rules, Joint Rule 12.

⁶¹ Id. To suspend Rule 12, in addition to approval of Joint Committee on Rules, the vote of four-fifths of the members of each branch is needed.

of the Joint Rules Committee, which was chaired by then-Senate Majority Leader Joseph J.C. DiCarlo.⁶²

According to William Harding's contemporaneous expense report, Harding had dinner on July 24, 1973 with MacKenzie and DiCarlo.⁶³ But neither Harding, nor MacKenzie, nor DiCarlo recalled such a meeting when asked about it by Commission staff.

The MacKenzie-Tully bill was enacted by both houses on October 1, 1973 and signed into law October 15, 1973. The emergency preamble on the bill made it effective immediately.

Burke's Agreement to Help
Harding and Shields
Obtain Essex County Contracts

William Harding met several times with Daniel Burke during 1973.⁶⁴ According to Harding, Burke became so impressed with Harding's abilities and experience that Burke promised to do what he could to help Harding win Essex County contracts.⁶⁵ Harding has further testified that Burke's understanding with Harding was personal to Harding -- that is, that Burke was not offering to help MBM (Harding's firm) get contracts; rather, Burke was intent on helping Harding receive contracts, regardless of what company Harding might be affiliated with.⁶⁶ Harding's testimony on this point has been corroborated by Daniel Shields.⁶⁷

62 Report of Joint Rules Committee, dated August 14, 1973.

63 Harding weekly expense report for period ending July 28, 1973.

64 See Harding expense reports entries for 4/3/73; 6/12/73; 7/25/73; 9/3/73 among others.

65 Harding testimony, Sp. Comm. 6/4/80 at 57, 66-67.

66 Id. at 66-67.

67 Shields testimony, Sp. Comm. 6/5/80 at 18.

In testimony to the Commission, Daniel Burke agreed with Harding and Shields that he had conversations with Harding and Shields which culminated in Burke's deciding that project management was a good idea for Essex County and that Burke would support Harding's and Shields's firm for the Essex County project.⁶⁸

Burke testified that there was no quid-pro-quo for his support of the Harding/Shields firm, but he added⁶⁹ that Harding and Shields

"probably made all kinds of promises to the finance people in my campaign and to me formally in discussions, but at no time was it ever tied to them acquiring a contract.... I believe my indication of support [for their firm] was before they even started on anything else, but there was, never any ['] you don't get the contract unless you give me X amount of money ['] or ['] you have to contribute X amount.['] There was never anything of that.

. . . .

"They always seemed to be generous type people, but at no time did I initiate a question of you are not doing anything unless you guarant[ee] that you do such and such. Never happened."

Shields, in testimony to the Commission, confirmed that there were discussions about "political contributions" to Burke.⁷⁰ Shields testified that it was agreed that Burke would be given \$25,000 in "campaign contributions" -- with \$7,000 going to Burke "up front" (i.e., before any contracts were awarded) and the balance over the term of the contracts that a Harding/Shields firm would receive from Essex County.⁷¹ Shields testified that this arrangement was worked out by Harding.⁷²

Harding's memory was less specific, but Harding recalled in testimony before the Commission that money was to be paid to Burke and Gaudet.⁷³ As Harding explained, "[We] were appreciative of [Burke's] efforts and we wanted to help him, no question about that."⁷⁴ Gaudet was entitled to money, according to Harding, because Harding believed that Gaudet "was also very influential in swaying the County Commissioners on the construction management views."⁷⁵

⁶⁸ Burke testimony, Sp. Comm. 3/12/80 at 39.

⁶⁹ Burke testimony, Sp. Comm. 3/12/80 at 38-40.

⁷⁰ Shields testimony, Sp. Comm. 6/5/80 at 18.

⁷¹ Shields testimony, Sp. Comm. 6/5/80 at 18-20.

⁷² Id.

⁷³ Harding testimony, Sp. Comm. 6/4/80 at 71-72.

⁷⁴ Id. at 98.

⁷⁵ Id. at 75.

The Formation of PCM

Daniel Burke's undertaking to help Harding/Shields obtain Essex County contracts came at a time when Shields was a man without a company -- having been fired by MBM on July 15, 1973 -- and Harding was on tenuous ground with MBM.⁷⁶ Accordingly, Harding and Shields decided to take steps to have the Essex County contracts awarded to a company other than MBM.

The following arrangement was utilized: A new company named Project Construction Management, Inc. ("PCM") was established by Shields and another former MBM employee named Jerry J. Campana.⁷⁷ PCM had no operating staff.⁷⁸ It was merely a sales organization.⁷⁹ Shields attempted to keep his participation in PCM off the public record, because Shields did not want to jeopardize a severance/"consulting" agreement that he had finally reached with MBM whereby Shields was to be paid \$25,000 per year for five years -- but which contained a type of non-competition clause.⁸⁰ Harding apparently also did not want to be publicly associated with PCM, since Harding was still working for MBM.⁸¹

Indeed, Harding was collecting expense reimbursements from MBM for Harding's

⁷⁶ Harding testimony, Sp. Comm. 6/4/80 at 58; Shields testimony, Sp. Comm. 6/5/80 at 8, 10.

⁷⁷ Shields testimony, Sp. Comm. 6/5/80 at 11, 13.

⁷⁸ Id. at 13.

⁷⁹ Id.

⁸⁰ Id. at 8, 13-14; Harding testimony, Sp. Comm. 6/4/80 at 67-68. See also Chapter II supra.

⁸¹ Shields testimony, Sp. Comm. 6/5/80 at 9-10, 12.

sales efforts on the very Essex County projects that would be going to PCM.⁸²

Since PCM had no operating staff, it was arranged that the actual work for Essex County would be done by a relatively new and small firm named Slaydek Construction Services, Inc.⁸³ The name "Slaydek" combines portions of the names of its two principals: Roy Slayton (an investor) and Adek Apfelbaum (another former MBM employee).⁸⁴

Although Slaydek was going to do all of the actual work for Essex County, it apparently was agreed, according to documents in the Commission's possession, that PCM would receive 40 percent of all monies received from Essex County contracts, and Slaydek would receive the other 60 percent.⁸⁵ The \$25,000 which Shields testified was going to go to Burke was to be advanced in the first instance by Slaydek, according to Shields,⁸⁶ and apparently it was then going to be deducted from PCM's 40 percent share of contract proceeds.⁸⁷

The decision to form PCM was made sometime late in 1973, and the firm's certificate of incorporation -- dated December 28, 1973 -- was filed in Delaware on January 3, 1974.⁸⁸ PCM neglected to register as a foreign corporation in Massachusetts until October 18, 1974.⁸⁹ The effects of that oversight are considered below.

82 See, for example, 1973 expense reports cited in footnotes 63-64.

83 Shields testimony, Sp. Comm. 6/5/80 at 17. Harding testimony, Sp. Comm. 6/4/80 at 64.

84 Id. at 59.

85 See Memorandum of Understanding between P.C.M. Inc., and Slaydek Construction Services, Inc., dated March 27, 1975.

86 Shields testimony, Sp. Comm. 6/5/80 at 20, 22.

87 See Memorandum of Understanding between P.C.M. Inc., and Slaydek Construction Services, Inc., dated March 27, 1975, at 2 (paragraph b).

88 Certificate of Incorporation of P.C.M., Inc., dated December 28, 1973 and filed in Delaware January 3, 1974.

89 Commonwealth of Massachusetts Foreign Corporation Certificate dated October 18, 1974.

The BBC's Position Regarding
Use of PCM by Essex County

Even after the MacKenzie-Tully bill was enacted (permitting counties to hire construction consultants), and even after Harding/Shields convinced Burke to "sponsor" or advocate PCM, there was still a roadblock to PCM's obtaining Essex County contracts. Early in 1974, Robert D. SanClemente -- an engineer on the staff of the state Bureau of Building Construction ("BBC") -- learned that Essex County was thinking of hiring PCM as project manager for Essex County projects.⁹⁰ SanClemente disapproved of the hiring of an outside project manager, since SanClemente understood that the BBC was required by law to provide most or all of the services that a project manager would provide.⁹¹

Harding and Shields attempted to allay such concern by engaging an attorney to appear before the Essex County Commissioners to explain that the County did have the legal authority to hire a consulting or project management firm such as PCM.⁹² In February 1974 PCM obtained the services of Francis X. Bellotti, who appeared before the County Commissioners on February 5, 1974 and made a brief presentation addressed primarily to the question of the county's authority.⁹³

Although the hiring of a firm such as PCM may have been legal, SanClemente felt it was inappropriate, and SanClemente conveyed this concern to Malcolm MacPhail, counsel for the BBC.⁹⁴ SanClemente then wrote a memorandum to his

⁹⁰ Testimony of Robert SanClemente, Sp. Comm. 6/4/80 at 5, 9. See minutes of Essex County Commission, February 5, 1974.

⁹¹ SanClemente testimony, Sp. Comm. 6/4/80 at 10.

⁹² Shields testimony, Sp. Comm. 6/5/80 at 36-37.

⁹³ Francis X. Bellotti is the duly elected Attorney General of the Commonwealth and a member of the Special Commission. Attorney General Bellotti cooperated fully with the Commission's investigation of PCM, submitting to interviews and making available all of his former law firm's files on PCM. Further, he recused himself from all votes and meetings of the Commission having to do with PCM. At the time he was employed by PCM, Bellotti was a lawyer in private practice. His office represented PCM on this single matter from February to November 12, 1974, when Bellotti withdrew his representation. Bellotti's office never received a fee from PCM, and both Shields and Harding told the Commission that Bellotti was never informed of PCM's commitment to make campaign contributions to Burke. Shields testimony, Sp. Comm. 6/5/80 at 38; Harding interview 7/11/79 at 2; 6/3/80 at 9; letter dated November 11, 1974 from Francis X. Bellotti and Martin S. Cosgrove to W. Barry MacDonald, Essex County Attorney, withdrawing representation of PCM; letter dated November 12, 1974 from Francis X. Bellotti and Martin S. Cosgrove to Project Construction Management, Inc., withdrawing representation.

⁹⁴ SanClemente testimony, Sp. Comm. 6/4/80 at 10.

supervisor, Arthur Poulos, summarizing MacPhail's advice.⁹⁵ In the memorandum, SanClemente said that MacPhail had informed SanClemente that county officials did have the right to hire management consultants, but that MacPhail had

"warned that the County Officials should be made aware that any consultant will be the responsibility of the County Officials and the terms of any such contract should not be allowed to duplicate or interfere with the duties of the Director of Building Construction or the appointed designer.... [A] Management Consultant's work may duplicate or conflict with the Director's responsibility.

"It is the duty of the Director of Building Construction to control and supervise all building construction projects under his jurisdiction by virtue of Chapter 6A, Sections 22 thru 30. The Bureau must review and approve plans and specifications for the construction of such buildings to see that documents are clear and complete and permit execution of the project with economy and efficiency. In the construction phase the Bureau has full responsibility of inspection, supervision, and final acceptance of a project.

"It is my understanding that the Essex County Commissioners intend to enter into a contract with a Management Consultant for project No. CES-1 and No. CES-2.

"I will be meeting with the Commissioners on March 19, 1974 and will inform them of the above information unless otherwise directed."

SanClemente apparently was left unsatisfied by whatever response he may have received from the Essex County Commissioners on March 19, 1974, because he drafted a letter which Arthur Poulos sent to the Essex County Commissioners⁹⁶ acknowledging that the County had the legal authority to hire a management consultant but --

"recommend[ing] that you [i.e., the County Commissioners] do not enter into a contract with a management consultant firm for the following reasons:

⁹⁵ Bureau of Building Construction Inter-office Memorandum dated March 7, 1974 from Robert SanClemente to Arthur Poulos, re: conversation with Malcolm MacPhail, counsel for B.B.C. on March 7, 1974.

⁹⁶ Letter from Arthur Poulos to Essex County Commission Chairman Edward H. Cahill re: Mass. State project CES 73-1 & CES 73-2, First District Court in Salem & District Court of Peabody. The letter is completely typewritten, except for a handwritten date (March 28, 1974). It is not clear when or by whom the date was written on the letter. See also Poulos testimony, Sp. Comm. 6/4/80 at 17; SanClemente testimony, Sp. Comm. 6/4/80 at 11.

"1. It is the function of the Bureau of Building Construction to provide engineering expertise, coordination and overview in all phases of these projects. These services are provided by an experienced, trained staff consisting of engineers, technicians and contract administrators. ... We feel a large portion of a management consultant's services will be provided by the Bureau.

"2. The cost of a management consultant will come out of the project funds and in essence will reduce the size and cost of the court houses. Using an unconfirmed figure of 3% for the consultant's fee this would represent about ... the size of one small court room. ...

"3. The Bureau has the utmost of confidence in the abilities of the project designers....

"4. It is conceivable that the addition of another independent firm could result in a longer design and review period. The management consultant[']s advice and recommendations must undergo time consuming [sic] reviews and evaluations by the designer and the Bureau.

"You are reminded that if a management consultant firm is hired they will be responsible for making recommendations or providing advice to only the County. According to the terms of the design contracts we feel the appointed designers are under no obligation to review or implement any recommendations made by an outside consultant.

Despite having taken this strong position against the use of a project manager, Poulos sent another letter just a few weeks later expressing a very different view. In a letter dated May 1, 1974 and addressed to Daniel Burke,⁹⁷ Poulos wrote:

"Your letter of April 24, 1974 requests an interpretation of the official position of the Bureau of Building Construction in regard to the services of Construction Management firms.

"Please be advised that the Bureau of Building Construction has in many instances employed the services of Construction Managers to assist in expeditious adherence to accelerated design and construction schedules. We have found the services of Construction Management to be quite worthwhile in the many projects utilizing them. ...

"In the case of Essex County which does not have a large technical staff the concept of Construction Management may have some merit particularly in view of the number of projects presently being designed in Essex County. The advi[c]e provided and the computer scheduling of the numerous and varied projects presently under design in Essex County could be most helpful to the officials of Essex County.

"The Bureau of Building Construction does not feel that the employment of a Construction Management Team would be in conflict with our agency, and we are willing to cooperate and work in concert with any group selected.

⁹⁷ Letter dated May 1, 1974 from Arthur Poulos to Daniel J. Burke.

"We hope this communication might clear any confusion surrounding the BBC policy regarding the use of Construction Management firms and if further information is desired, please feel free to call upon us."

Although Poulos's letter said that it was answering an April 24, 1974 letter from Burke, neither Poulos nor anyone else in the BBC was able to locate such a letter from Burke, when requested to do so by the Commission.⁹⁸ Indeed, Poulos testified that the file on the whole project could not be located.⁹⁹ As previously noted, the first "Poulos letter" had been drafted by SanClemente and sent out with Poulos's knowledge and approval. The second "Poulos letter" was not drafted or even reviewed by SanClemente before it was sent out, according to SanClemente, even though SanClemente was the BBC employee specifically assigned to the Essex County projects.¹⁰⁰

When Poulos was asked whether he discussed the subject matter of the second "Poulos letter" with anyone else at the BBC before writing the letter, he replied: "I may have discussed it with the director, that would have been consistent with what I would do in a case such as this."¹⁰¹ The BBC Director at that time was Walter J. Poitrast.¹⁰²

There was additional testimony to the Commission suggesting that Poitrast might have had something to do with the second "Poulos letter." William Harding (of MBM/PCM) testified:¹⁰³

"I worked on th[e] possibility of making sure I got a letter from the Bureau of Building Construction saying in effect to Essex County that they thought it would be wise for them to have a construction manager on this site. ...

. . . .

"I would assume [I discussed this subject with Mr. Poitrast]. I assume he probably was the one asked, but I don't remember."

⁹⁸ Poulos testimony, Sp. Comm. 6/4/80 at 18.

⁹⁹ Id. at 19.

¹⁰⁰ SanClemente testimony, Sp. Comm. 6/4/80 at 13.

¹⁰¹ Poulos testimony, Sp. Comm. 6/4/80 at 25.

¹⁰² Id. at 8.

¹⁰³ Harding testimony, Sp. Comm. 6/4/80 at 63, 78. Harding went on to indicate that it was possible that he had spoken with Poulos on the subject, but that he had no memory of having done so.

Essex County Contracts
Awarded to PCM

PCM received several contracts from Essex County. Before describing those contracts, however, it is necessary to discuss a purported contract from Essex County that was apparently used as the basis for obtaining one or more bank loans for PCM, even though -- according to testimony -- the purported contract was not a real contract.

The purported contract was not able to be found anywhere in the official records of Essex County. It came to the Commission's attention when it was located in the loan records of a bank which had loaned money to PCM.¹⁰⁴

The purported contract is dated December 7, 1973 and contains what purport to be the signatures of Daniel J. Burke (for Essex County) and Jerry J. Campana (for PCM).¹⁰⁵ The document would appear to be a contract by which Essex County engaged PCM as construction manager for a Centralized Correctional Institution in Middleton. It recites that the budgeted construction cost of the project is \$16,000,000 and the PCM fee for "basic services" is to be 3.5% of construction cost.¹⁰⁶ Simple mathematics reveals that PCM's fee -- at 3.5 percent of \$16 million -- would have amounted to approximately \$500,000.

According to the testimony of Daniel Shields, Burke agreed to sign this document to enable PCM to obtain financing from banks.¹⁰⁷ Although Shields described the document as a "sample contract,"¹⁰⁸ there does not appear to be anything in the document to indicate that it was merely a "sample," nor do the loan records of the bank in question indicate that the bank was informed that the document was merely a "sample contract."¹⁰⁹ The Commission has no evidence and no reason to believe that any of the Essex County Commissioners other than Burke knew of this purported contract.

¹⁰⁴ New England Merchants National Bank records concerning March 1974 loan negotiations.

¹⁰⁵ Document headed "Agreement between: Essex County, Commonwealth of Massachusetts and P.M.C. [sic] Inc.," dated December 7, 1973.

¹⁰⁶ Id. at 1, 21. The purported agreement specifies that PCM would also be paid on a cost-plus basis for job site management costs, transportation costs, and other out-of-pocket costs. Id. at 21, 25, 26.

¹⁰⁷ Shields testimony, Sp. Comm. 6/5/80 at 34.

¹⁰⁸ Id.

¹⁰⁹ New England Merchants National Bank records.

There were several contracts, however, that were approved unanimously by the Essex County Commissioners for PCM, and those contracts were intended to be genuine.¹¹⁰ The first of these were voted at the meeting of the Essex County Commissioners held on February 5, 1974. The minutes of that meeting¹¹¹ record that

"Upon motion of Mr. Burke, duly seconded, it was unanimously VOTED:

"To appoint Project Construction Management Inc. ... as the Construction Manager for the County of Essex for the new Salem District Courthouse, Peabody District Courthouse, and proposed Jail Complex building projects, subject to the approval of the Architect, the Bureau of Building Construction, and negotiations as to the fee to be charged, ... and subject to the final approval of the Essex County Commissioners.

"Upon motion of Mr. Burke, duly seconded, it was unanimously VOTED:

"To bring to the attention of the Board of Trustees for the Essex Agricultural & Technical Institute, the availability of this type of management construction service for their new high school and other new buildings under consideration."

Further, according to the minutes of the Essex County Commissioners' meeting of May 7, 1974:¹¹²

"Upon motion of Mr. Burke, duly seconded, it was unanimously VOTED:

"That Project Construction Management Inc. ... be appointed as the construction management firm for Essex County, specifically for the Peabody District Courthouse, the First District Courthouse for Salem, and other construction projects as they are approve[d], for the lump sum fee of 3-1/2% of the total project contract."

Formal contracts were executed within a month of the May 7, 1974 vote.¹¹³ The fees that PCM was to receive under these and other contracts from Essex County would be in the hundreds of thousands -- if not millions -- of

¹¹⁰ See following discussion in text of formal motions. See also Decision and Order for Judgment, Duffy v. Burke (Super. Ct., Essex Co., Oct. 20, 1976) at 1-3.

¹¹¹ Minutes of 2/5/74 meeting of Essex County Commissioners.

¹¹² Id. for 5/7/74.

¹¹³ Agreement between Essex County, Commonwealth of Massachusetts and P.C.M. Inc., dated June 4, 1974 and signed by Commissioners Daniel J. Burke, Edward H. Cahill, and Katherine M. Donovan and, for PCM, A[dek] Apfelbaum.

dollars.¹¹⁴

Payments to Burke
By PCM Officials

As previously mentioned, Daniel Shields testified to the Commission that there was an agreement pursuant to which PCM officials would furnish \$25,000 in "campaign contributions" -- \$7,000 "up front" -- to Burke in connection with Burke's assistance in PCM's attempts to procure contracts from Essex County. Shields further testified that since PCM was a new company with no other contracts and no assets, and since neither Shields nor Harding was personally in the financial condition to be able to make such "contributions," the funds would come from Slaydek.¹¹⁵ The money would then follow a convoluted path: first, it would go to Shields and Campana. They, in turn, would write out personal checks to Harding. Then, Harding would write out checks to funnel the money to Burke's campaign.¹¹⁶

The Commission located microfilms of checks and deposit slips evidencing the transfer of funds from Shields/Campana to Harding to the Burke Committee. As shall be seen, some of the transfers from Harding to the Burke Committee were not made directly.

The first series of checks started with a check dated November 19, 1973 for \$4,000 from Shields to Harding.¹¹⁷ (Shields had previously obtained the \$4,000 from Slaydek.)¹¹⁸ Harding deposited the \$4,000 Shields check to Harding's bank

¹¹⁴ See, e.g., Contract dated January 28, 1975 between PCM and Essex County.

¹¹⁵ Shields testimony, Sp. Comm. 6/5/80 at 19-20, 22.

¹¹⁶ Id. at 21-22.

¹¹⁷ Check number 598 dated November 19, 1973 for \$4,000 to the order of William F. Harding, drawn on the personal account of Dianne E. Shields, signed by Daniel J. Shields. See Shields testimony, Sp. Comm. 6/5/80 at 23.

¹¹⁸ Shields testimony, Sp. Comm. 6/5/80 at 23.

account on November 20, 1973.¹¹⁹ Harding then wrote a check dated November 26, 1973 for \$2,000 payable to the Daniel J. Burke Committee,¹²⁰ and that check was deposited on November 27, 1973 into the Burke campaign account by Barbara Gaudet.¹²¹ Barbara Gaudet, in addition to being the wife of Burke's associate Paul Gaudet, was campaign treasurer for Burke.¹²² Harding also wrote out a \$1,000 check payable to Paul Gaudet.¹²³ That check was dated November 20, 1973 and was cashed the following day at the Lynn Five Cent Savings Bank.¹²⁴ This money may have been intended for Burke.¹²⁵

The next series of transfers occurred in December of 1973 and January of 1974. By check dated December 28, 1973, Jerry Campana transferred \$5,000 to

119 Check is endorsed "William F. Harding." Harding identified the signature as his own. Harding testimony, Sp. Comm. 6/4/80 at 84.

120 Check number 379 dated November 26, 1973 for \$2,000 to the order of Daniel J. Burke Committee, drawn on the personal account of William F. Harding. Harding identified the signature as his own. Harding testimony, Sp. Comm. 6/4/80 at 74, 85.

121 The check is endorsed with the stamp "For Deposit Only, D. Burke Committee, Barbara Gaudet, Treas." The bank recorded that the check was processed November 27, 1973.

122 Id.

123 Check number 370 dated November 20, 1978 for \$1,000 to the order of Paul Gaudet on the personal account of William F. Harding. at 74. Harding identified the signature as his own. See Harding testimony, Sp. Comm. 6/4/80 at 74, 85.

124 The check is endorsed "Paul C. Gaudet". The bank processed the check November 21, 1973.

125 Shields testimony, Sp. Comm. 6/5/80 at 24.

Harding.¹²⁶ Harding deposited the check.¹²⁷ On December 28, 1973, a check for \$3,000 from Harding to "Cash" (dated December 24, 1973) was deposited to the Burke Committee account by Barbara Gaudet.¹²⁸ On January 5, 1974, a Harding check for \$1,000 to "Cash" (check dated December 24, 1973) was negotiated by Paul Gaudet at the State Street Bank & Trust Company.¹²⁹

The checks actually going to Burke's committee and to or through Gaudet during these first two rounds of transactions total \$7,000 -- precisely the amount that Shields testified was to be "up front" money.¹³⁰ It should be noted that Shields told Commission staff about this figure before the Commission staff had heard of (or obtained) the financial records that tend to corroborate it.¹³¹

PCM received its first official approvals from Essex County on February 5, 1974, as previously discussed. Shields made a \$2,000 check payable to Harding dated February 9, 1974, and Harding deposited the check in his bank account.¹³²

126 Check number 950 dated December 28, 1973 for \$5,000 to the order of William F. Harding, drawn on the personal account of J.J. Campana and Joan Campana, signed by J.J. Campana. See Harding testimony, Sp. Comm. 6/4/80 at 76.

127 The check is endorsed "William F. Harding." Harding identified the signature as his own. Id. at 86.

128 Check number 410 dated December 24, 1973 for \$3,000 to the order of "Cash," drawn on the personal account of William F. Harding. The bank processed the check on December 28, 1973. Harding identified the signature as his own. Id. at 86.

129 Check number 409 dated December 24, 1973 for \$1,000 to the order of "Cash," drawn on the personal account of William F. Harding. The check is endorsed "Paul C. Gaudet." Essex County Bank processed the check on January 5, 1974. Harding identified the signature as his own. Id. at 86.

130 Shields testimony, Sp. Comm. 6/5/80 at 20.

131 Shields interview.

132 Check number 160 dated February 9, 1974 for \$2,000 to the order of William F. Harding, drawn on the personal account of Daniel J. Shields. Shields identified the signature as his own. Shields testimony, Sp. Comm. 6/5/80 at 29. The check was processed by Harding's bank on February 11, 1974. Harding acknowledged receipt of this payment. Harding testimony, Sp. Comm. 6/4/80 at 77, 90.

Harding, in turn, made a \$2,000 check payable to Paul Gaudet.¹³³ That check, dated February 15, 1974 was endorsed by Gaudet.

No subsequent payments to Burke and/or Gaudet were found by the Commission or testified about by the witnesses. The fact that there apparently were no further payments may be related to the fact, to be discussed in the following section, that PCM never got paid for any of the work it did for Essex County.¹³⁴ Before turning to PCM's problems in receiving payment, it should be mentioned that Daniel Burke's salary as Chairman of the Essex County Commissioners in 1973 was \$8,799.73.¹³⁵ It should also be noted that the legal limit on personal contributions in Massachusetts was \$3,000 in 1973 and \$1,000 in 1974.¹³⁶ Direct or indirect corporate contributions in any amount were illegal.¹³⁷

The Refusal by
Essex County Treasurer
Thomas F. Duffy
To Pay PCM's Invoices

PCM, as discussed above, had no operating staff and was not equipped to perform directly the services called for under the contract between PCM and Essex County. Instead, PCM in effect subcontracted the work out to Slaydek Construction Services. Slaydek thereupon did perform some work for Essex County

¹³³ Check number 448 dated February 15, 1974 for \$2,000 to the order of Paul C. Gaudet, drawn on the personal account of William F. Harding. Harding identified the signature as his own. Id., at 90.

¹³⁴ Harding testimony, Sp. Comm. 6/4/80 at 82-83. Shields testimony, Sp. Comm. 6/5/80 at 45.

¹³⁵ G.L. c.34 s.5.

¹³⁶ Acts of 1962, c.444; Acts of 1973, c.1173.

¹³⁷ Acts of 1946, c.537 s.10.

on the various projects, primarily through Adek Apfelbaum.¹³⁸ PCM then submitted invoices to the county for payment.¹³⁹ The County Commissioners approved the bill for payment,¹⁴⁰ but County Treasurer Thomas F. Duffy refused to pay the bills.¹⁴¹

There was at least one technical basis for refusing payment. PCM had neglected to register in Massachusetts as a foreign corporation,¹⁴² and that failure permitted the Treasurer to avoid suit for the fees that otherwise might have been due.¹⁴³ To remedy the omission, PCM filed a foreign corporation certificate on October 18, 1974.¹⁴⁴ In order to have a contract that was executed after PCM registered as a foreign corporation, one (and perhaps more) of the original 1974 contracts was (were) retyped and executed on January 28, 1975.¹⁴⁵ PCM then submitted invoices under that (those) contract(s), and Treasurer Duffy again refused payment.¹⁴⁶

The matter came to a head when Duffy filed a petition for a declaratory judgment in Superior Court, to determine the legality of an order of payment to

¹³⁸ Shields testimony, Sp. Comm. 6/5/80 at 44.

¹³⁹ Id. See, e.g., copies of PCM invoices dated June 25, August 12, August 13, and October 10, 1974.

¹⁴⁰ See Decision and Order for Judgment, Duffy v. Burke, at 1.

¹⁴¹ Roland Corneau, "Duffy refuses to pay N.Y. firm," Salem Evening News, November 4, 1974 at 1. Harding testimony, Sp. Comm. 6/4/80 at 82-83.

¹⁴² Harding testimony, Sp. Comm. 6/4/80 at 80-81.

¹⁴³ G.L. c. 181 s. 9 See letter dated November 19, 1974 from Essex County Attorney W. Barry MacDonald to Essex County Commissioners Chairman Edward H. Cahill re: validity of 6/4/74 contract between Essex County and PCM.

¹⁴⁴ Foreign Corporation Certificate dated October 18, 1974, filed by Project Construction Management, Inc. See Harding testimony, Sp. Comm. 6/4/80 at 81.

¹⁴⁵ Minutes of Essex County Commissioners, January 28, 1975. Document headed "Basic Services," dated January 28, 1975, signed by Commissioners Daniel J. Burke, Katherine M. Donovan, and Edward H. Cahill, and for PCM, William F. Harding and John Malesko.

¹⁴⁶ "Agreed Statement of Facts" in Decision and Order for Judgment, Thomas F. Duffy v. Daniel Burke, et als (Super. Ct. Essex Co., No. 2631, 1976) at 5.

PCM made by the Essex County Commissioners. Justice Francis J. Good ruled¹⁴⁷ on October 20, 1976 that --

"The contract of January 28, 1975, between [the Essex County] Commissioners and P.C.M., Inc., is null and void and of no legal consequence and there is no sum due from the county nor the Treasurer to said P.C.M., Inc., for services rendered in reliance upon said contract."

In reaching this ruling, Justice Good explained:¹⁴⁸

"[A]s far as I have been able to determine, PCM has never undertaken to assume the authority to control or supervise the construction of this courthouse. They have been present as an extra cog in the scene of the construction and at no time have they asserted authority to change, add or subtract something to the contract with the expectation that anyone had to pay attention to them.

"...I find that PCM ...is having a free ride on the way to receiving a fee of up to 3% of the total cost of the construction contract.... PCM's advice and/or suggestions...serve no useful purpose and play no part in the construction project at all and are completely superfluous.

"Indeed, I find, as well, that at its best, PCM's activity amounts to a needless and wasteful duplication of time and expense with reference to the consultant work performed by the Architect hired by the [BBC] Director for and in behalf of the B.B.C. . . .

"... PCM has no authority to act at all. I am unable to say that the taxpayers' interests would be served and their money saved by this astonishing conduct of the Commissioners in their efforts to add to the cost of the courthouse the cost of the services of PCM to the Commissioners with reference to a contract [i.e., the architectural contract between the BBC and the architect] to which neither [i.e., PCM or the Commissioners] is a party and neither has any rights or obligations thereunder."

PCM appealed the judgment of Justice Good but lost the appeal.¹⁴⁹ Thus, even though PCM apparently did some work on the project, which even BBC engineer SanClemente conceded was of some value,¹⁵⁰

¹⁴⁷ Decision and Order for Judgment, Thomas F. Duffy v. Daniel Burke, et al. at 14.

¹⁴⁸ Id. at 9-10, 12-13.

¹⁴⁹ Interview of Adek Apfelbaum by Commission staff.

¹⁵⁰ Testimony of Robert SanClemente, Sp. Comm. 6/4/80 at 16-17.

PCM never received a penny from Essex County.¹⁵¹

Moreover, the PCM contracts were costly to both Shields and Harding in other ways. MBM President McKee learned of the contracts and Shields's role in PCM and promptly terminated the severance/"consulting" payments from MBM to Shields.¹⁵² And Harding -- who had charged Essex County sales trips for PCM to Harding's MBM expense account -- was discharged by MBM.¹⁵³

¹⁵¹ Harding testimony, Sp. Comm. 6/4/80 at 83.

¹⁵² See Memorandum ("Confidential") dated April 30, 1975 from "Jerry" [Gerald McKee, Jr.] to MBM officer Stanley Emerson. Letter dated December 30, 1974 from D.W. Zeigler to Arnold Stream, Esq. re: Daniel J. Shields.

¹⁵³ See MBM payroll ledger card for William F. Harding.

CHAPTER XI

CONCLUSION

The Commission believes that certain witnesses failed to testify truthfully in matters before it, before the Post Audit Subcommittee, before the Superior Court in the Manzi-Masiello trial, and before the United States District Court in the DiCarlo-MacKenzie trial. The Commission has decided, however, as a matter of policy, not to make formal referrals for prosecution on any of these potential perjury cases.

It is the sense of the Commission that the MBM case must come to an end. While false testimony may have been given within unexpired limitations periods, it relates to events that occurred far beyond any applicable limitations period, and the Commission believes that the matter should be put to rest rather than rehashed indefinitely. It is hoped that the exposure of the pattern of abuses, as well as the changes that have been made in the contract-awarding process, will deter others from engaging in such activities. The evidence is clear enough, the facts are set forth fully in this Report, the inferences are left to the reader. The public policy in bringing the MBM affair to an end outweighs the benefits of further proceedings, in the Commission's view.

APPENDICES

APPENDIX A

THE FEE ARRANGEMENT
BETWEEN MBM AND THE PEABODY FIRM

Contemporaneous documents¹ and testimony of Jeremiah Lambert² indicate that MBM's initial agreement with the Peabody law firm (effective September 1, 1969) called for MBM to pay a retainer of \$800 per month, plus reimbursement of out-of-pocket expenses (e.g., travel, postage, photocopying) incurred on MBM's behalf by the Peabody firm. This was a continuation of the fee arrangement that had existed between MBM and Lambert's prior firm, Drew & Lambert.³

A special fee agreement was superimposed on top of the \$800 monthly retainer, however, to compensate the Peabody firm for former Governor Peabody's assistance in regard to the UMass/Boston contract. Although MBM continued to pay a monthly retainer, MBM also apparently agreed that if Peabody's services helped MBM to obtain the UMass/Boston contract, MBM would pay to the Peabody firm a percentage of whatever MBM ultimately received from the Commonwealth on the UMass/Boston contract.⁴

At first, MBM apparently agreed to pay 1 percent of its contract proceeds to the Peabody firm.⁵ At some time in December 1969, however, the percentage apparently was negotiated down to 1/2 of 1 percent.⁶

Since the precise fee arrangement has been the subject of considerable dispute and has important ramifications, it seems appropriate to discuss it in some detail. After a consideration of the fee arrangement itself, an explanation will be given of its significance.

The Percentage Fee Agreement. The documentary evidence that MBM and the Peabody firm had a percentage arrangement regarding the UMass/Boston contract is rather extensive. MBM was formally selected to receive the UMass/Boston project

¹ Statements dated September 30, 1969, October 31, 1969, November 25, 1969, December 26, 1969 from the Peabody law firm to MBM; memorandum dated December 26, 1969 from Jeremiah D. Lambert to "Jack" [presumably MBM comptroller Jack Lifschitz].

² Testimony of Jeremiah D. Lambert, Sp. Comm. 6/18/80 at 25-28.

³ Id. at 25-26.

⁴ Memorandum dated February 17, 1970 from "Gov. Peabody" to "Mr. Lambert," re: "MBM Fee - University of Massachusetts."

⁵ Id.

⁶ Id. See also letter dated December 26, 1969 from Jeremiah D. Lambert to Gerald J. [sic] McKee, Jr. and other documents discussed below.

management job on December 22, 1969.⁷ Two days later, Peabody, Lambert, and MBM officials met in New York.⁸ Part of the substance of that meeting was recorded in a letter which Lambert wrote to McKee to "summarize our understanding of the revised fee arrangements we discussed on [December 24, 1969]."⁹ The letter said, in pertinent part:

"For services rendered in connection with obtaining the construction management contract with the University of Massachusetts, the [Peabody] firm is to receive a lump sum fee of \$17,500 upon MBM's execution of a final contract document, based on the presently anticipated size of the contract."
[Emphasis added.]

An MBM memorandum apparently sent by McKee to MBM comptroller Jack Lifschitz in January 1970¹⁰ elaborated on the fee agreement:

"The fee arrangement as set forth in Lambert's letter of December 26th correctly represents our agreement with his firm.

"Note. The \$17,500 lump sum fee assumes a total contract value of \$3,500,000 and should be scaled down if, as now appears, the project will be somewhat less than this amount."

A fee of \$17,500 would, of course, equal 1/2 of 1 percent of a contract value of \$3,500,000. Other documents support the view that this percentage basis was used.

For example, in February 1970 Peabody wrote a memorandum to his partner Lambert, discussing the fee:¹¹

"As I remember, we agreed that a fee equal to 1 percent of the gross on this matter would be reasonable, but we were willing to take one-half percent in view of the continuing retainer.

"I understand that the proposal of MBM ... [to the Commonwealth of Massachusetts for a total contract value of] \$3.5 million, is acceptable. Indeed, it may now be a contract. Thus our fee will be \$17,500.00 or close to it.

"In view of the fact that MBM is currently receiving compensation under the contract, whether or not it has been signed, I think they should start making payments this month toward that fee. I certainly could use my share and I am sure you could use yours."

⁷ Letter dated December 22, 1969 from A&F Commissioner Donald R. Dwight to BBC Director Walter Poitrat, announcing award of Project U67-4 #2A (project management services for UMass/Boston) to MBM.

⁸ December 24, 1969 entries for attorneys "EP" [Endicott Peabody] and "JDL" [Jeremiah D. Lambert] on MBM tub card II of the Peabody law firm. The Peabody law firm called its clients' ledger records "tub cards." Peabody testimony, P.A. 3/7/78 at 112.

⁹ Letter dated December 26, 1969 from Jeremiah D. Lambert to Gerald J. [sic] McKee, Jr. re: "revised fee arrangements."

¹⁰ Memorandum dated January 19, 1970 to Jack Lifschitz re: Peabody firm's fee for UMass/Boston work.

¹¹ Peabody 2/17/70 memorandum to Lambert.

If Peabody's recitation of the fee arrangement was correct,¹² then it would appear that the original agreement on a figure of 1 percent must have been reached before MBM was awarded the contract, since the final agreement on a figure of 1/2 of 1 percent was apparently reached no later than December 24, 1969 -- just two days after MBM was formally awarded the contract.¹³

Lambert took up Peabody's suggestion that MBM be pressed to start paying the "UMass fee" immediately. In a letter dated February 26, 1970 to McKee,¹⁴ Lambert wrote, in pertinent part:

"[T]here is the matter of the lump sum fee which you, Chub and I discussed in late December with respect to the University of Massachusetts contract. Since this contract appears to be moving forward, we are hopeful that we can receive all or a substantial portion of the agreed amount, which was estimated to be \$17,500." [Emphasis added.]

On May 14, 1970, Lambert wrote another letter to McKee,¹⁵ to "confirm our recent discussion with you regarding our fee in respect of the University of Massachusetts contract." According to this letter by Lambert:

"1. We will receive \$17,500 in three monthly installments commencing May, 1970. (We have already received the first of these.)

"2. We will also receive an incremental fee calculated by multiplying MBM's actual contract proceeds (i.e., fee and reimbursables) by 1/2 percent less \$7,500 (thus in effect putting us \$10,000 ahead), with payment of incremental fee amounts to be made quarterly."

¹² In testimony before the Commission, Lambert stated that he took no steps in 1970 to tell Peabody that Peabody's understanding as expressed in the above memorandum was incorrect. Lambert testimony, Sp. Comm. 6/18/80 at 54-56.

¹³ While the December 26, 1969 letter discussed above makes no reference to a specific percentage figure or to the specific estimated contract size, there is no reason to believe that MBM on December 24, 1969 estimated the contract to be worth anything other than the \$3,500,000 mentioned in the January 19, 1970 memorandum. If the \$17,500 which was agreed upon on December 24, 1969 had been calculated as 1 percent of MBM's contract value, that would have meant that MBM on December 24, 1969 thought the contract would be worth only \$1,750,000 -- but by January 19, 1970 thought it would be worth \$3,500,000. There is no evidence to support such a conclusion. In addition to the documentary evidence which appears to lead to the conclusion that a percentage agreement between MBM and the Peabody firm was reached before MBM won the contract, there is a common-sense rationale to support such a conclusion: If MBM, which was in difficult financial straits throughout most of its existence, had agreed -- as of the time MBM was selected for the UMass/Boston job -- to pay the Peabody firm only the normal \$800 monthly retainer whether or not MBM won the job, it is difficult to believe that MBM would have then decided to give the Peabody firm a hitherto unagreed-upon bonus of \$17,500. And it is particularly difficult to believe that MBM would have arrived at a percentage "bonus" arrangement simply out of generosity and gratitude -- without there having been a prior agreement for such compensation over and above the \$800 normal monthly retainer fee.

¹⁴ Letter dated February 26, 1970 from Jeremiah D. Lambert to Gerald J. [sic] McKee, Jr. re: UMass fee.

¹⁵ Letter dated May 14, 1970 from Jeremiah D. Lambert to Gerald J. [sic] McKee, Jr. re: UMass fee.

The reason for this arrangement appeared in a handwritten note from Peabody to Lambert,¹⁶ apparently Peabody's comments on a draft of this May 14 letter; the note read, in pertinent part:

"What McKee said was that they wanted to keep \$10,000 ahead on fees.

"For example assuming he paid us \$10,000 now and on July 1 \$7,500 worth of fees had been accrued based on amounts paid by the Commonwealth \$7,500 would be due us."

McKee responded by a letter to Lambert¹⁷ which contained McKee's "recollection of our agreement for the U/Mass fee." McKee said that he was "not sure that it is really any different from your May 14th letter, but if it is I should like to discuss it with you." According to McKee, the agreement was as follows:

- "1. Your fee will be 1/2% of all contract proceeds.
- "2. We will pay, on account of this, a total of \$17,500 in three monthly payments.
- "3. When proceeds reach \$1,500,000 you will have been paid \$7,500, representing 1/2 of 1% of proceeds plus a 'retainer' of \$10,000 applicable against future proceeds payments.
- "4. Each month subsequent to the date when proceeds reach \$1,500,000, you will be paid 1/2% of the month's proceeds.
- "5. The 'retainers' will be liquidated at the end of the UMass involvement such that total payments to you will not have been more than 1/2 of 1%."

Lambert apparently agreed with McKee's summary, since Lambert referred to it in a November 23, 1970 letter to MBM comptroller Samuel N. Beckerman.¹⁸ In that letter Lambert acknowledged that the Peabody firm had been paid the installments totalling \$17,500 and reminded Beckerman that the Peabody firm was to receive additional amounts, equal to 1/2 of 1 percent of each month's proceeds that MBM was receiving from the Commonwealth for the UMass/Boston contract.

¹⁶ Handwritten memorandum undated [but on or before May 14, 1970] from "Chub" [Endicott Peabody] to "Jerry" [Jeremiah D. Lambert], concerning fees.

¹⁷ Letter dated August 14, 1970 from Gerald McKee, Jr. to J[eremiah] D. Lambert re: "UMass fee," at 1-2.

¹⁸ Letter dated November 23, 1970 from Jeremiah D. Lambert to Samuel N. Beckerman. (Beckerman had succeeded Jack Lifschitz as MBM comptroller.)

Lambert asked Beckerman to "advise me where matters stand and whether any further payment is now due[.]" Beckerman replied that MBM's accrued receipts on the contract stood at \$1,267,363. He concluded, "It will be seen therefore, that at the present time, no additional fees are yet payable, since the contract proceeds have not yet exceeded \$1.5 million."¹⁹

It soon became clear that MBM would receive more than \$3,500,000 from the Commonwealth for the UMass/Boston contract, and Lambert quickly saw to it that the Peabody firm would receive its 1/2 of 1 percent of this larger amount. According to a March 24, 1971 memorandum:²⁰

"1. The present U/Mass fee arrangements contemplate an aggregate fee equal to 1/2 of 1 percent of total contract proceeds. Predicated on \$4.5 million of such proceeds, PRC&L [the Peabody law firm]'s fee will be \$22,500. Of this amount, \$17,500 has already been paid. PRC&L is therefore to submit an invoice in the amount of \$5,000 after 4/30/71 to cover the excess.

. . .

"5. As to item 1 above, Phase II proceeds -- and the fee which may be due to PRC&L in respect thereof -- will be handled by gentlemen's agreement, i.e., if there is a Phase II, PRC&L fee will be adjusted to reflect additional proceeds to MBM on presently understood proportional or percentage basis, expressed eventually as fixed fee."

On May 5, 1971, Lambert sent a letter to McKee reminding McKee that the additional \$5,000 had been agreed upon, and enclosing a statement covering it.²¹ That amount was paid in 1972.²²

Despite these contemporaneous documents, Messrs. Lambert and Peabody later denied that there was a percentage arrangement between MBM and the Peabody firm. For example, on May 25, 1978, Lambert wrote a letter to Charles R. Nesson, counsel

¹⁹ Letter dated December 15, 1970, from Samuel N. Beckerman to Jeremiah D. Lambert.

²⁰ "Memorandum of Discussions Between GM [presumably Gerald McKee, Jr.] and JDL [presumably Jeremiah D. Lambert], 3/24/71."

²¹ Letter dated May 5, 1971 from Jeremiah D. Lambert to Gerald J. [sic] McKee, Jr. with enclosures.

²² Lambert testified that the \$5,000 payment in question was received in January 1972. Lambert testimony, Sp. Comm. 6/18/80 at 73. There is some ambiguity about the total fee paid by MBM to the Peabody law firm. Peabody testified in 1978 that his firm had been paid \$27,500. Peabody testimony, P.A. 3/7/78 at 110. Furthermore, a letter dated June 26, 1972 from Jeremiah D. Lambert to Andrew H. Serrell states that as of May 31, 1972 MBM still owed the Peabody firm the \$5,000 "UMass fee," as well as other accrued fees.

to the Post Audit Subcommittee, regarding the fees received by the Peabody law firm from MBM in connection with the UMass/Boston contract.²³ In that letter, Lambert wrote that he had "discussed this letter with Governor Peabody, who concurs in its findings." Although the letter went on at considerable length, at no point did it make any mention of a percentage arrangement.

Nesson was not satisfied with Lambert's "findings," as he made clear in a letter dated June 6, 1978 from Nesson to Peabody's/Lambert's lawyer, Morris M. Goldings.²⁴ Nesson wrote, in part:

"I am in receipt of Mr. Lambert's letter of May 25, 1978, and do not consider it a satisfactory response to the inquiries which were made of you.

"You will recall that my inquiry stem[med] from an entry on one of Governor Peabody's tab sheets which indicated that in calculating a monthly fee, Governor Peabody apparently included a dollar amount described as 'U. Mass fee.' I wanted to know whether that represented a portion of a larger fixed fee or of a percentage fee.

"In a subsequent meeting with you, you indicated that Mr. Lambert and Governor Peabody had consulted their records and that there had been at one time a percentage fee arrangement with MBM with respect to the U. Mass project. You indicated further that it was the intention of Mr. Lambert and Governor Peabody to describe that arrangement in a letter to the Committee.

"The letter which has been provided to the Committee obviously does not contain any such description or explanation. You have indicated to me that the reason for this is that when the letter of explanation was shown to Gerald McKee, he objected to Mr. Lambert and Governor Peabody providing the explanation to the Post Audit Committee, basing his objection on attorney-client privilege.

"Mr. McKee, on behalf of MBM, has clearly waived the privilege...."

Nesson's letter prompted a letter dated June 7, 1978 from Lambert to Nesson.²⁵ Lambert wrote, in pertinent part:

²³ Letter dated May 25, 1978 from Jeremiah D. Lambert to Charles R. Nesson.

²⁴ Letter dated June 6, 1978 from Charles R. Nesson to Morris [M.] Goldings.

²⁵ Letter dated June 7, 1978 from Jeremiah D. Lambert to Charles R. Nesson.

"Our counsel, Morris Goldings, has transmitted to us the text of your letter dated June 6, 1978, in response to my letter dated May 25, 1978.

"I have since had an opportunity to discuss this matter briefly by telephone with Mr. McKee.... He emphasizes that he is not seeking to assert attorney-client privilege to deny the Committee information expressly concerning U/Mass fees paid by MBM to this firm....

. . . .

"Our fee arrangements with MBM were subject to continuing discussions over a period of almost one year. In late December, 1969, after MBM had been selected by the Designer Selection Board but before [MBM] had entered into the U/Mass contract, our arrangements with MBM contemplated a lump sum fee of \$17,500 for all legal services related to contract formation. Subsequent discussions concerned the manner in which this fee was to be paid and the possibility of adjusting it upward to take into account MBM's revenues actually received under the contract. At those discussions, it was agreed that in no event was our fee to exceed 1/2% of MBM's contract revenues.

"In fact, payments of the U/Mass fee were made in the following amounts and on the following dates:

"\$5,833.00 May 5, 1970

"\$5,833.00 June 2, 1970

"\$5,834.00 July 6, 1970

"\$5,000.00 January 22, 1972

"The total amount actually received in respect of the U/Mass fee was thus \$22,500. That amount was not in fact determined as a percentage of MBM's contract revenues; nor did it exceed the percentage limitation previously noted. As paid, it reflected nothing more nor less than a negotiated and liquidated amount for our legal services in connection with the formation of the U/Mass contract." [Emphasis added.]

In addition to Lambert's written denials of a percentage-based arrangement, Lambert also denied in testimony to the Commission in 1980 that there was an agreement, prior to MBM's selection as UMass/Boston project manager, such that the Peabody firm's fee would vary depending upon, or be calculated as a percentage of, MBM's actual receipts from the UMass/Boston project.²⁶ Former Governor Peabody then indicated that he had not paid much attention (in 1969-72) to the fee arrangement and that he would defer to the substance of Lambert's testimony before the Commission.²⁷

²⁶ Lambert testimony, Sp. Comm. 6/18/80 at 35-37, 40-44, 51-55, 60-62, 66.

²⁷ Peabody testimony, Sp. Comm. 6/19/80 at 29.

Moreover, former Governor Peabody went to considerable effort to try to deny to the Commission the documents quoted from above as well as many other documents. Peabody was asked, both orally on March 26, 1979 and May 16, 1979,²⁸ and in writing on June 13, 1979, to produce the documents voluntarily.²⁹ When he refused, the Commission issued a summons specifically covering those documents.³⁰ Former Governor Peabody refused to comply with the summons,³¹ and instituted a court proceeding in which he attempted to quash the summons and, indeed, to obtain a court ruling that the Commission could not continue any of its investigations. The Massachusetts Supreme Judicial Court unanimously rejected Peabody's arguments and ordered him to produce the documents to the Commission forthwith.³²

Before a discussion of the significance of the Peabody firm's receiving a percentage fee, it may be worthwhile to consider whether the Peabody firm's UMass fee was contingent in nature.

The Contingent Nature of the Fee. Mr. Lambert has testified that the fee arrangement with MBM was "in no sense contingent."³³

In the context of attorney and client, the term "contingent fee" has been defined as an arrangement between attorney and client whereby the attorney agrees

28 File memorandum dated April 3, 1979 by Commission attorney Michael L. Tabak re: "Telephone Conference with Morris Goldings, Esq." Letter dated June 13, 1979 from Commission attorneys Michael L. Tabak and A. John Pappalardo to Endicott Peabody and Jeremiah D. Lambert with attachment.

29 Tabak and Pappalardo 6/13/79 letter to Peabody and Lambert.

30 Massachusetts Special Commission Concerning State and County Buildings, Summons to Endicott Peabody, dated and served October 12, 1979.

31 Motion to Quash or Limit Summons, and Request for Hearing Thereon, In the Matter of Endicott Peabody, filed with Commonwealth of Massachusetts Special Commission Concerning State and County Buildings, on October 22, 1979.

32 Ward v. Peabody No. SJC-2072 (Mass., February 14, 1980). (Order that the summons be enforced.)

33 Lambert testimony, Sp. Comm. 6/18/80 at 98-101, 108.

to represent the client with the attorney's compensation to be a percentage of the amount received by the client.³⁴ Since the Peabody firm's agreement with MBM was that the Peabody firm would be paid 1/2 of 1 percent of whatever MBM received on the UMass/Boston contract, it would seem clear that the Peabody firm had a contingent fee arrangement with MBM.

Not only was the amount of the Peabody firm's fee contingent, but it appears that a contingency determined whether the Peabody firm would receive any fee at all (other than its normal retainer) for helping MBM with the UMass/Boston contract: it appears that the Peabody firm would receive a large "UMass fee" if its efforts helped MBM win the job, but it would receive nothing above its normal monthly retainer if MBM did not win the UMass/Boston contract.

Both Peabody and Lambert denied that the Peabody firm would have received nothing above its normal monthly retainer if MBM did not win the UMass/Boston contract.³⁵ They did not, however, direct the Commission to any documents or other evidence supporting their testimony on this point.

But there are reasons to believe that the Peabody firm would have received only its normal monthly fee -- and nothing extra -- if MBM had not won the contract. For example, there were other contracts in Massachusetts that Peabody tried to help MBM obtain during the period 1970-1972, while the percentage arrangement was still continuing with respect to the UMass/Boston contract and was still expected to apply if MBM obtained Phase II of the UMass/Boston job. In no instance where MBM failed to obtain a contract, did the Peabody firm bill for or receive payment above the normal monthly retainer, so far as the Commission can determine. Moreover, as to the UMass/Boston job, the numerous MBM-Peabody documents which discussed fees were quite specific, and they made no mention of any extra fee that the Peabody firm would receive, above its normal monthly retainer, if MBM failed to win the contract.

³⁴ See Black's Law Dictionary (5th ed.) at 553.

³⁵ Lambert testimony, Sp. Comm. 6/18/80 at 101-102; Peabody testimony, Sp. Comm. 6/19/80 at 34-35.

If MBM had not won the UMass/Boston contract, any extra payment for Peabody's work should have been minimal. Peabody devoted only 31 hours of billable time to all MBM matters during the three-month period in which MBM was trying to win the UMass/Boston job.³⁶ Since Peabody's billing rate to MBM was no more than \$50 per hour at the time,³⁷ Peabody's services in trying to obtain the UMass/Boston contract for MBM would have been worth at most \$1550. Of course, the normal monthly retainers paid by MBM to the Peabody firm would have covered much or all of that.

In contrast, when MBM won the UMass/Boston contract, the Peabody firm received a special \$22,500 fee. The extra \$22,500 that the Peabody firm received for helping MBM obtain the contract is equivalent to \$725 per hour for the time Peabody spent on the matter -- approximately fifteen (15) times Peabody's regular rate as a lawyer.³⁸

The Significance of the Fee Arrangement. Why did Messrs. Lambert and Peabody go to such lengths to deny (1) that their fee was to be determined on a percentage basis and (2) that their fee was contingent? The Commission expresses no views as to the reasoning or motivation of Peabody or Lambert. There are, however, some additional documents that are interesting in this regard -- documents that the Commission obtained pursuant to court order, after former Governor Peabody's objections to the Commission's summons were overruled by the Massachusetts Supreme Judicial Court.

³⁶ Peabody law firm MEM tab cards I and II, for period 10/1/69 through 12/22/69.

³⁷ Lambert testimony, Sp. Comm. 6/18/80 at 71.

³⁸ This calculation changes little even if it is assumed that Lambert spent some time in regard to obtaining the UMass/Boston contract for MEM. Of course, there is no reason to assume that Lambert did spend much time on the matter. Cf. Lambert testimony, Sp. Comm. 6/18/80 at 64.

The first document is dated February 10, 1971 -- less than a week after MBM and the Peabody firm became aware of a series of news articles criticizing MBM's UMass/Boston contract and calling for a legislative investigation.³⁹ The document is a memorandum⁴⁰ from Jeremiah Lambert to an attorney named Roger M. Golden who worked for the Peabody law firm. Identified as being "Re: MBM," Lambert's memorandum said:

"This will confirm my request that you investigate the applicable Massachusetts law concerning disclosure by a contractor with the Commonwealth of the identity of persons with a 'financial interest' in the contract.

. . .

"You should seek to find an answer to the question whether fees paid to counsel for the contractor in connection with negotiating and arranging the contract constitute a 'financial interest' subject to disclosure and should distinguish, if such a distinction is indicated by law, between lump sum fees and fees which are expressed, either in whole or in part, as a function of the contract amount.

"Check also periodical literature which may deal with the Massachusetts statute or any related statutory provision as well as the equivalent provisions of Federal procurement law with respect to contingent fees and the payment of fees for the obtaining of a Government contract.

"Please prepare a concise memorandum of your finding for the Governor and for me."

Lambert sent a copy of this memorandum to former Governor Peabody.

Golden researched the matter and sent a memorandum dated February 16, 1971 to Lambert "Re: Fee Arrangement with MBM."⁴¹ Golden began by quoting a Massachusetts statute:⁴²

"No contract to provide consultant services shall be awarded by the Commonwealth, or by any department, board, commission or other agency acting in its behalf, unless the person signing such contract on behalf of the party contracting to provide such services files with the comptroller a statement under the penalties of perjury setting forth the names and addresses of all persons having a financial interest therein not including, however, any person whose only financial interest therein consists of the holding of one per cent or less of the capital stock of a corporation contracting to provide such services." [Emphasis added.]

³⁹ See Chapter VII.

⁴⁰ Memorandum dated February 10, 1971 from "J.D.L." [Jeremiah D. Lambert] to "R.M.G." [Roger M. Golden] re: MBM.

⁴¹ Memorandum dated February 16, 1971 from "RMG" [Roger M. Golden] to "JDL" [Jeremiah D. Lambert], re: "Fee Arrangement with MBM."

⁴² G.L. c.7 s.14A.

Golden reported that he could find no legislative history for this disclosure statute and no cases in point. He did, however, find a formal opinion by the Massachusetts Attorney General in 1964 stating that, irrespective of the size of the corporation involved, or of the difficulties of obtaining the information required, the provisions of the statute "must be complied with in every case." [Emphasis added.]⁴³

Golden did not mention in his final written memorandum to Lambert that the Attorney General's Opinion also said: "Clearly, the object of the [statutory] provision is the identification of parties financially interested in the contract who otherwise might remain anonymous....[W]here an agreement exists for the payment of an agent's fee or commission in connection with the contract, disclosure of this fact would be necessary." [Emphasis added.]⁴⁴

Golden did suggest that the Peabody firm consider "adopting the position that we do have a 'financial interest' in the contract in question."⁴⁵ But, Golden hastened to observe, "this approach must of course be balanced against any detrimental effects from being listed as such a person within the meaning of [the statute]."⁴⁶ Thus, Golden appears to have been saying that it would be prudent from a strictly legal point of view for the Peabody firm to agree to be listed as having a financial interest in MBM's UMass/Boston contract, but that the Peabody firm should consider from a practical point of view whether it wanted to be identified as having a financial interest in a contract that might soon come under investigation by a Massachusetts legislative committee.

The Peabody firm, having considered Golden's memorandum,⁴⁷ did not make or cause any disclosure of having a financial interest in the MBM-Mass/Boston

⁴³ Golden 2/16/71 memorandum to Lambert, at 2, summarizing 1963-64 Op. AG 222.

⁴⁴ 1963-1964 Op. AG 222, Application of Chapter 844 of the Acts of 1963, specifically the term "financial interest."

⁴⁵ Golden 2/16/71 memorandum to Lambert, at 6.

⁴⁶ Id.

⁴⁷ Lambert testified that he read and considered the memorandum. Lambert testimony, Sp. Comm. 6/18/80 at 89. In Lambert's February 10, 1971 memorandum of instructions to Golden, Lambert said that the Golden memorandum was to be for Lambert and Peabody. Lambert 2/10/71 memorandum to Golden.

contract.⁴⁸

Golden's memorandum considered not only whether the fee arrangement between the Peabody firm and MBM had to be disclosed but also whether the fee arrangement was illegal under Massachusetts law.⁴⁹ Golden noted that "Federal procurement law is quite clear in its general prohibition against a contingent fee arrangement in connection with obtaining a government contract. 10 U.S.C.A. s.306(b) provides:

"Each contract negotiated under section 2304 of this title shall contain a warranty, determined to be suitable by the head of the agency, that the contractor has employed or retained no person or selling agency to solicit or obtain the contract under an understanding or agreement for a commission, percentage, brokerage, or contingent fee, except a bona fide employee or established commercial or selling agency maintained by him to obtain business. If a contractor breaks such a warranty the United States may annul the contract without liability or may deduct the commission, percentage, brokerage, or contingent fee from the contract price or consideration.'" [Emphasis added.]

"And," Golden continued, "it has been held that this prohibition is founded upon 'strong national policy.' Acme Process Equipment Co. v. United States, 347 F.2d 538, 552 (Ct. Cl. 1965), mot. den. 351 F.2d 656 (Ct. Cl. 1965)."⁵⁰ Thus, Golden pointed out, "the question is whether Massachusetts, in the absence of its own statutory provisions, has adopted the federal law, and therefore whether a contingent fee arrangement in connection with solicitation of a public contract is against public policy in the Commonwealth."⁵¹

After some analytical discussion, Golden concluded that "the rule in Massachusetts would seem to be that a contingent fee arrangement is not per se illegal. It is merely one factor to be considered in determining whether a given

⁴⁸ It may be noted in this connection that MBM's UMass/Boston project management contract was specifically determined to be a consultant contract requiring compliance with G.L. c.7 s.14A. See letter dated October 8, 1971 from Assistant Attorney General Frederick J. Sheehan to Senator Joseph J. C. DiCarlo, concerning the approval of the MBM-BBC contract no. 601 as to form; this letter appears in Commonwealth of Massachusetts, House No. 5006 dated January 10, 1971 [i.e. 1972], Report of the Joint Special Committee [DiCarlo-Sirianni Committee] relative to the construction of the University of Massachusetts, Boston at Columbia Point, at 40-41.

⁴⁹ Golden 2/16/71 memorandum to Lambert, at 2-6 .

⁵⁰ Id. at 3.

⁵¹ Id. at 4.

contract is consistent with the public policy of the Commonwealth."⁵²

There is at least one other circumstance which may have some relationship to the denial by Lambert and Peabody that their fee was a percentage fee or a contingent fee. During the course of the 1971 DiCarlo-Sirianni Committee investigation into MBM, which is discussed in Chapter VII above, it became apparent that McKee or other MBM officials might be required to testify before the DiCarlo-Sirianni legislative investigating committee.⁵³

A letter dated June 11, 1971 from Lambert to McKee,⁵⁴ obtained by the Commission pursuant to summons and court order, says:

"As you requested today, I am enclosing a form of response to the hypothetical question you posed concerning fee arrangements."

Entitled "Response to Hypothetical Question Posed by Investigative Committee Concerning Fee Arrangements Between PRC&L [the Peabody law firm] and MBM," this document -- apparently written or approved by Lambert -- suggested that McKee testify as follows (in pertinent part) if called upon to do so by the DiCarlo-Sirianni Committee:

"Our [MBM's] present arrangements with the [Peabody] firm provide for the payment of a monthly retainer for general representation. These arrangements have been in effect for some time and commenced before the date of award of the subject contract [the UMass/Boston contract]. In recognition of the [Peabody] firm's work on behalf of MBM (in connection with the subject contract and otherwise), payments in excess of the basic retainer have been made from time to time. However, such payments were in no sense contingent; and the extra amounts paid have been determined in the context of a continuing relationship between attorney and client."

Of course, as discussed above, the monthly retainer paid in 1969 was only \$800, while the UMass/Boston fee was \$22,500; Peabody's usual hourly billing rate was \$50 or less, while the hourly billing rate implicit in the Peabody firm's UMass

⁵² Id. at 5.

⁵³ McKee did, in fact, testify to the DiCarlo-Sirianni committee on July 29, 1971.

⁵⁴ Letter dated June 11, 1971 from Jeremiah D. Lambert to Gerald J. [sic] McKee, Jr. enclosing memorandum entitled "Response to Hypothetical Question Posed by Investigative Committee Concerning Fee Arrangements Between PRC&L and MBM."

fee was on the order of \$725; and the Peabody firm's fee -- having been calculated as 1/2 of 1 percent of MBM's revenues -- would seem at least "in [some] sense contingent."

Lambert presumably anticipated, when he sent the proposed answer to McKee, that McKee would be giving the answer while under oath, subject to the pains and penalties of perjury.⁵⁵

When Lambert was asked about the fee arrangement in his appearance before the Commission, he concluded by stating:⁵⁶

"What I have said is that it was not my intent specifically to dissemble [in] my letter to Mr. Nesson. The complexity of this matter, which we have certainly elucidated very well in my judgment, may as Mr. Forbes [Peter Forbes, member of the Special Commission] himself noted earlier have caused me to use an inaccurate reference. I think it was not intentional. Certainly, I would not submit inconsistent letters, one to Mr. Nesson and one to Mr. Tabak, without knowing that they were going to be compared very closely. So that the only thing I can tell you, as I have before, the letters are essentially in their basic elements the same. They seek to convey the same information. The fee amounts actually paid, when they were paid, the basic context in which the discussions between the client arose and developed, all of that is set forth in both letters and we seek to convey that fully so that I have no apologies except that if there was an inaccuracy, I believe it to be inadvertent and that one we certainly corrected by our subsequent submission."

⁵⁵ G.L. c.3 s.27.

⁵⁶ Lambert testimony, Sp. Comm. 6/18/80 at 128-129.

APPENDIX B

EVIDENCE BEARING ON
MBM'S ACTIVITIES IN
OTHER STATES

MBM President Gerald McKee, Jr. testified in federal court at the DiCarlo-MacKenzie trial in 1977. McKee said that MBM had paid \$40,000 to DiCarlo and MacKenzie, and McKee described (without naming names of the recipients) that MBM had also given \$10,000 to Manzi in October 1970; another \$10,000 to Manzi in May 1972; \$2,000 to Kevin Harrington and \$2,000 to the Kevin White gubernatorial campaign in October 1970; \$1,000 to James A. Kelly, Jr. in January 1972; and \$2,000 to Frederick Kussman in January 1972.¹ McKee gave explanations for these payments (e.g., some were extorted from MBM; others were tantamount to small gifts to friends) but emphasized that no quid pro quos were involved.

McKee then swore, under oath, that these were the only political payments that MBM made in Massachusetts during the years 1969 through 1972, and that MBM did not make any political payments anywhere else in the country during those years.²

In 1978, at the Post Audit Subcommittee hearings, McKee testified that he could not "put [his] finger on why [MBM] felt it was necessary to [make such payments in Massachusetts]," particularly since, in his words, MBM "managed to avoid it in every other state in which [MBM] worked."³

In 1979, at the Manzi-Masiello trial in Massachusetts Superior Court, McKee was asked about testimony that MBM salesman William F. Harding had given at the DiCarlo-MacKenzie trial to the effect that Harding had transported cash from MBM throughout the United States as political contributions.⁴ McKee swore, under oath, that Harding's testimony was untrue.⁵

¹ McKee testimony, 6 DiC 2/1/77 at 52-53, 55-56.

² McKee testimony, 6 DiC 2/1/77 at 56. McKee did say that MBM's wholly-owned subsidiary MCM made \$7,000 or \$8,000 in indirect political payments in Philadelphia in 1972, but McKee claimed that he had not known about those payments until 1973, at which time he said he fired the responsible individuals. McKee testimony, 6 DiC 2/1/77 at 183-185; P.A. 3/22/78 at 108.

³ McKee testimony, P.A. 3/22/78 at 107-108.

⁴ Harding testimony, 13 DiC. 2/10/77 at 85-86.

⁵ McKee testimony, 12 M/M 3/1/79 at 119-121.

McKee's testimony was echoed by MBM by Vice President Anthony Mansueto, who swore that MBM did not use political influence to obtain contracts and that "[MBM] never did and we never will...hire any political people for contracts."⁶ Mansueto stated, under oath, that Massachusetts was the first place where he encountered the practice of politicians raising money from people doing business with the state -- a practice which Mansueto said he first learned about from Endicott Peabody in 1970 -- and Mansueto testified that MBM never made any political contributions outside Massachusetts.⁷

In order to evaluate this and other testimony by McKee and Mansueto⁸ (particularly the testimony that MBM did not obtain the UMass/Boston contract in return for a commitment to make cash payments to the Sargent campaign/administration), it is necessary to consider the evidence that tends to contradict these categorical denials. Such evidence of activities in states other than Massachusetts is important also in terms of deciding whether it is McKee or Maurice Khoury who has told the truth about whether MBM had a nationwide policy of making cash payments to political people in return for public contracts. In addition, evidence of MBM's activities in other states may shed some light on how MBM operated in Massachusetts in regard to the UMass/Boston contract and other contracts.

The Commission has obtained some concrete information about MBM activities in Pennsylvania, Illinois, Louisiana, and Maryland. That evidence is summarized in the following sections. The Commission heard uncorroborated allegations about MBM's activities in some other states, but that information is not being discussed in this Report because of its less certain nature.

Pennsylvania. In 1971, MBM acquired Mauchly Construction Management, Inc. ("MCM"), as has been discussed previously in this report.⁹ MCM had applied for a \$1.5 million contract at the Philadelphia International

⁶ Mansueto testimony, P.A. 6/9/78 at 117; P.A. 5/23/78 at 110.

⁷ Mansueto testimony, P.A. 5/23/78 at 44, 74, 118.

⁸ Other testimony includes McKee testimony, Sp. Comm. 6/26/80 14-18, 97-102; 6 DiC 2/1/77 at 187-189. Mansueto testimony, 9 DiC 2/4/77 at 100; 10 DiC 2/7/77 at 77-78, 117-118.

⁹ See discussion in Chapter II supra.

Airport,¹⁰ and MCM continued to press for the contract even after MCM had been acquired by MBM.¹¹

MCM's application for the Philadelphia International Airport contract was being supported by Dr. Leon C. Nurock. Nurock, in addition to being an optometrist, was an active fundraiser for the Philadelphia Democratic City Committee.¹² Nurock had been put on MCM's payroll as a "consultant" and had received at least \$7,000 from MCM in 1970.¹³ MCM did receive some preliminary contracts from the airport,¹⁴ and MCM's March 17, 1971 check to Nurock contained the notation: "Dec. fee - airport job."¹⁵

When MCM was being acquired by MBM later in 1971, MCM President Shields introduced MBM President McKee to Nurock and to other such "consultants" from other states, so that McKee could determine whether to continue paying for those "consultants'" services.¹⁶ McKee and McKee's wife visited Nurock and Nurock's wife in New Hope, Pennsylvania,¹⁷ and McKee decided to continue utilizing Nurock's services.¹⁸

¹⁰ See Mauchly Construction Management Proposal Listing, Pennsylvania, undated but probably summer 1971.

¹¹ See MBM Monthly Marketing/Sales Summary dated January 15, 1972, addendum for Mauchly Construction Management, at 4.

¹² Notes of 7/26/79 interview of Leon C. Nurock by Special Commission staff, at 1.

¹³ MCM checks dated 8/17/70 for \$2,000, 9/14/70 for \$1,000, 10/14/70 for \$1,000, 10/16/70 for \$2,000, and 12/3/70 for \$1,000, all payable to Dr. Leon C. Nurock.

¹⁴ MCM Job No. PMO-223 for construction management services valued at \$126,400, awarded in June of 1970, with supplement valued at \$8,100 awarded in November 1970; MCM Job No. PMO-256 for cost control services valued at \$16,305, awarded December 1970.

¹⁵ MCM check #1564 dated March 17, 1971 for \$1,000 payable to Dr. [Leon C.] Nurock.

¹⁶ Interview of Daniel J. Shields by Special Commission staff 3/5/80.

¹⁷ Notes of 6/18/79 interview of Gerald McKee, Jr. by Special Commission staff, at 6.

¹⁸ Id. Nurock 7/26/79 interview, at 1-2; Shields 7/21/79 interview, at 3.

A Philadelphia Special Investigating Grand Jury looked into Nurock's activities in regard to the Philadelphia International Airport and made a detailed presentment which was made public.¹⁹ According to that special grand jury, Nurock was the agent and "right-hand man" of Philadelphia Democratic City Committee Chairman Peter Camiel.²⁰ As such, Nurock allegedly saw to it that the airport construction management contract, which was awarded in May 1972 to Meridian Engineering, Inc., was converted into a joint venture of Meridian and MCM.²¹ At a meeting at which the terms of the joint venture were allegedly worked out, Nurock allegedly indicated by holding up five fingers that a five percent kickback would be due.²² This meeting allegedly occurred in June 1972, well after MCM was acquired by MBM.²³ No indictment was ever returned against Nurock, so far as the Commission knows, despite the recommendation of the special investigating grand jury.²⁴

In 1972, during all of which MCM was a wholly-owned subsidiary of MBM, Nurock received \$25,500 in "consulting fees" and \$8,849.06 in "expense reimbursements" from MCM.²⁵ MCM also made three payments in 1972 to the Philadelphia Letter Shop, Inc. -- totalling \$7,387.50 -- for expenses apparently incurred by the

¹⁹ Philadelphia Special Investigating Grand Jury, June Term 1972, Twelfth Presentment, made public December 27, 1973. See Joseph R. Daughen, "Jury Wants Top Phila. Democrats Prosecuted for Political Blackmail," Philadelphia Evening Bulletin, December 27, 1973.

²⁰ Philadelphia Special Investigating Grand Jury, June Term 1972, Twelfth Presentment, at 15, citing testimony given under a grant of immunity by Thomas A. Graham, chairman of the board of Meridian Engineering, Inc.

²¹ Id.

²² Id. at 15, citing testimony of Graham.

²³ Id.

²⁴ Id. at 23-24, 31; Nurock 7/26/79 interview, at 1.

²⁵ MCM check dated 1/19/72 for \$2,000; checks for \$750 each dated 1/5/72, 1/19/72, 2/18/72, 2/29/72, 3/16/72, 3/29/72; checks for \$1,000 each dated 4/12/72, 4/22/72, 5/10/72, 5/25/72, 6/9/72, 6/20/72, 7/6/72, 7/19/72, 8/2/72, 8/16/72, 8/30/72, 9/14/72, 9/28/72, 10/13/72, 10/27/72, 11/8/72, 11/22/72, 12/8/72, 12/22/72; all checks payable to Dr. Leon C. Nurock.

Philadelphia Democratic City Committee.²⁶ The foregoing payments were all made by MCM checks.

In addition to these payments made directly by check, other payments allegedly were made in cash. According to MCM Comptroller Peter T. Pallotta, one such payment was \$5,000 in cash which was generated by an MBM check signed by McKee in August 1972.²⁷ Pallotta said that he (Pallotta) delivered the cash to Nurock at the 30th Street train station in Philadelphia, and that the cash was allegedly to be used to meet the payroll of the Philadelphia Democratic City Committee.²⁸

On July 15, 1973, MCM President Daniel Shields -- who had become MBM President in February 1973 (as McKee moved up to become President of MBM's parent company, IMS)²⁹ -- was fired.³⁰ Thereafter, Nurock and McKee met on October 3, 1973 to discuss Nurock's continuing relationship with MBM.³¹ According to Nurock, McKee was fully cognizant of the details of Nurock's previous arrangement with MBM/MCM and did not seem surprised at the amount of money already paid or owed to Nurock.³²

McKee wrote a memorandum for files dated October 4, 1973.³³ The memorandum set forth the commitments that allegedly had been made to Nurock previously. According to McKee's memorandum, Nurock had said that he had been promised \$2,000 per month from June 1970 through December 1971; \$1,500 per month throughout 1972;

²⁶ MCM check #420 dated November 27, 1972 for \$1,557.50; #421 dated November 27, 1972 for \$3,180; #422 dated November 27, 1972 for \$2,650; all payable to the Philadelphia Letter Shop, Inc. See also McKee testimony, 6 DiC 2/1/77 at 183-185.

²⁷ MBM check #4075 dated August 17, 1972 for \$5,000 payable to cash, signed by Gerald McKee, Jr. Notes of 7/25/79 interview of Peter T. Pallotta by Special Commission staff, at 19.

²⁸ Pallotta 7/25/79 interview, at 19; confidential information made available to the Special Commission.

²⁹ See discussion in Chapter II supra.

³⁰ See discussion in Chapter II supra.

³¹ See Memorandum to files dated October 4, 1973, signed G. McK. [Gerald McKee, Jr.], re: "Meeting with Dr. Leon Nurock [on October 3, 1973], at 1.

³² Nurock 7/26/79 interview, at 2.

³³ McKee 10/4/73 memorandum for files.

and \$2,000 per month, plus expenses, for 1973. On top of those amounts, MBM had been paying \$500 per month rent on Nurock's New Hope, Pennsylvania home since November 1972. Nurock allegedly had said that MBM was behind in its payments to him.³⁴

In a letter dated October 9, 1973, McKee acknowledged to Nurock that MBM owed Nurock \$40,000 for "past services."³⁵ McKee proposed a payment schedule to cover those old amounts.³⁶ In addition, McKee proposed that Nurock continue to work as an MBM "consultant" at a fee of \$1,500 per month plus expenses (which would be pegged at \$500 per month).³⁷ It appears that Nurock accepted this offer by signing a copy of the letter.³⁸ Some payments were made pursuant to this agreement.³⁹

Nurock apparently offered to be of help outside Philadelphia, as well as within Philadelphia, and McKee apparently was interested. For example, the Commission found a memorandum dated December 10, 1973 and apparently sent by McKee to MBM Vice President salesman James A. Haney, Jr.⁴⁰ According to the memorandum, "Nurock mentioned that he might be able to arrange a meeting with [Boston Mayor] Kevin White." On December 28, 1973, McKee wrote to Nurock that McKee and Haney were enthusiastic about meeting White and that Haney would be in touch with Nurock about arranging the meeting.⁴¹ In 1979, in an interview with Commission staff, Haney not only denied meeting White but denied ever having seen the above-described documents or discussing their substance with McKee.⁴²

³⁴ Id. at 1.

³⁵ Letter dated October 9, 1973 from Gerald McKee, Jr. to Dr. Leon Nurock, concerning Nurock's consulting services for MBM.

³⁶ Id.

³⁷ Id.

³⁸ Id.

³⁹ Commission staff analysis of MBM/MCM payments to Leon C. Nurock.

⁴⁰ Memorandum dated December 10, 1973 from "G." [Gerald McKee, Jr.] to Jim [James A.] Haney, Jr., concerning a possible meeting with Kevin White.

⁴¹ Letter dated December 28, 1973 from Gerald McKee, Jr. to Dr. Leon Nurock.

⁴² Notes of 6/19/79 interview of James A. Haney, Jr. by Special Commission staff, at 1.

Nurock, however, told Commission staff that he did remember a request by McKee to meet White, and Nurock said that he asked an intermediary to arrange the meeting.⁴³ Nurock said he did not know whether the meeting ever took place,⁴⁴ and the intermediary denied having set up such a meeting or being asked to set up such a meeting.⁴⁵

The Commission does not know whether such a meeting took place or whether White was ever contacted on behalf of MBM. It is documented, however, that MBM won two no-bid CPM contracts (worth a total of \$43,175) from the City of Boston.⁴⁶ MBM's proposals for those contracts were apparently accepted by Boston Public Facilities Director Robert J. Vey on December 23, 1974,⁴⁷ as ratified by White's signature on July 23, 1975 approving a letter-request from Vey that the contracts be awarded to MBM without public advertising, "[i]n view of the professional and technical nature of the services to be performed."⁴⁸

Mayor White was not asked to testify before the Commission because there was some doubt whether the Commission had jurisdiction to take testimony concerning these contracts.⁴⁹ The information is presented here to illustrate the kinds of services that McKee sought from Nurock. The information is also of interest

⁴³ Nurock 7/26/79 interview, at 2-3.

⁴⁴ Id. at 3.

⁴⁵ Notes of 8/1/79 telephone interview.

⁴⁶ MBM Job No 2-5002-502, CPM services in connection with the construction of the athletic wing of Mattapan Elementary School and the physical education building at Charlestown High School.

⁴⁷ See letter dated January 7, 1975 from MBM Vice President Kris R. Neilson to Robert J. Vey.

⁴⁸ Letter dated June 19, 1975 from Robert J. Vey to Kevin H. White, re: "Critical Path Method (CPM) Services at Charlestown High School and Mattapan Elementary School," with approval signed by Kevin H. White, dated July 23, 1975.

⁴⁹ Mayor White testified in 1978 that he did not know whether the City of Boston had done business with MBM. Testimony of Kevin H. White, P.A. 4/3/78 at 19.

in light of McKee's testimony that he was so shocked by the way business was done in Massachusetts with regard to public contracts that he directed in 1973 that MBM stop seeking additional public work in Massachusetts.⁵⁰

Illinois. MBM started obtaining public work in Illinois as early as 1962. According to James E. Elias, MBM's Chicago manager at the time, firms with public contracts in Chicago were expected to buy tickets to political fundraising events, and MBM did so.⁵¹ The Commission did not have access to many checks from MBM's Chicago bank accounts, but it did come upon one MBM corporate check for \$1,000 dated April 23, 1970 and payable to the Democratic Party of Cook County.⁵² According to James Elias, that check represented payment for ten \$100 seats to a fundraiser for Chicago Mayor Richard J. Daley, and MBM made other similar contributions during the 1960's and 1970's.⁵³ Elias said that on the first occasion when he was approached for such a contribution, he discussed it with McKee, who approved the payment.⁵⁴

In 1972, MBM actively pursued a contract to provide project management for a five-year Chicago Board of Education program to rehabilitate 250 public school buildings.⁵⁵ The project management contract, which MBM won in 1973, was worth \$8 million and was the largest contract that MBM ever received anywhere.⁵⁶

⁵⁰ McKee testimony, Sp. Comm. 6/26/80 at 11.

⁵¹ Notes of 8/2/79 interview of James E. Elias by Special Commission staff, at 7.

⁵² MBM-Chicago check #8029 dated April 23, 1970 for \$1,000 payable to the Democratic Party of Cook County.

⁵³ James Elias 8/2/79 interview at 7.

⁵⁴ Id. See also notes of 3/25/80 interview of James Elias's brother, Frank C. Elias, by Special Commission staff, at 5-6. Frank Elias was an MBM salesman who worked in MBM's Chicago office and other MBM offices.

⁵⁵ McKee testimony, Sp. Comm. 6/26/80 at 105-106; Ronald Koziol, "Claim Bribe Made for School Contract," Chicago Tribune, June 28, 1980, at 3.

⁵⁶ McKee testimony, Sp. Comm. 6/26/80 at 105.

Leaving no stone unturned in their attempt to win the contract, MBM officials Mansueto and Shields met on November 20, 1972 with Chicago Mayor Richard Daley.⁵⁷ They were allegedly accompanied and introduced to Daley by John O'Shea, the Treasurer of the Philadelphia Democratic City Committee.⁵⁸ Although Mansueto and Shields told Commission staff that the introduction to Daley was very brief and not even a formal meeting,⁵⁹ MBM apparently felt otherwise in 1972. According to a 1973 memorandum by McKee, Leon Nurock pointed out to McKee in 1973 that MBM had previously agreed "to pay O'Shea \$2,000 per month for as long as the Chicago contract continued."⁶⁰ That arrangement may be corroborated by a letter dated October 2, 1972 from McKee to O'Shea, confirming that MBM was engaging O'Shea's public relations firm to do advertising and public relations work for MBM at a fee of \$2,000 per month.⁶¹ MBM subsequently made payments to O'Shea and to his firm.⁶²

The foregoing evidence should be considered in conjunction with Maurice Khoury's sworn statement that McKee told Khoury that MBM had to pay \$100,000 or \$150,000 to public officials for MBM to obtain or retain the Chicago school

⁵⁷ Mansueto pocket calendar, 11/20/72, contains the notation "300 p. Mtg w/ Mayor Daley re Chic B of E Rehab Prog."

⁵⁸ Id.

⁵⁹ Notes of 7/24/79 interview of Anthony E. Mansueto by Special Commission staff, at 6; Shields interview.

⁶⁰ McKee 10/4/73 memorandum to files, at 2.

⁶¹ Letter dated October 2, 1972 from Gerald McKee, Jr. to John J. O'Shea, concerning public relations services from MBM.

⁶² MBM checks #5807 dated 5/16/73 for \$2,119.15; #6698 dated 10/4/73 for \$4,000; #7092 dated 11/13/73 for \$1,000; #7399 dated 12/17/73 for \$500; #7742 dated 1/30/74 for \$500; #8453 dated 3/26/74 for \$500; for a total of \$8,619.15 all payable to Thomas J. LaBrum Associates, Inc., O'Shea's public relations firm. In addition, MBM checks #6891 dated 10/31/73, #7221 dated 11/21/73, #7741 dated 1/30/74, and #8454 dated 3/26/74 each for \$2,000 payable to John O'Shea.

contract.⁶³ It should also be noted that Chicago newspapers have reported that MBM won the \$8 million contract despite the fact that other firms had submitted proposals with lower budgets -- in one case \$2.4 million less than MBM's.⁶⁴ The contract was terminated early by the Chicago School Board, costing MBM \$3 million in fees⁶⁵ and constituting the first step towards MBM's eventual demise, according to McKee.⁶⁶

Louisiana. MBM sought and obtained some significant contracts in Louisiana in the 1970s.⁶⁷ A "consultant" who allegedly was helpful to MBM in Louisiana was J. Marshall Brown, a Louisiana businessman who allegedly was a fundraiser for Louisiana Governor John McKeithen.⁶⁸

Brown was a "consultant" to MCM before it merged with MBM.⁶⁹ According to MCM/MBM salesman William Harding, Brown was introduced to McKee,

⁶³ Khoury 6/24/80 affidavit, at 1.

⁶⁴ See Larry Weintraub, "Bribe Charged in School Pact," Chicago Sun-Times, June 29, 1980, at 56.

⁶⁵ McKee testimony, Sp. Comm. 6/26/80 at 105; Koziol, "Claim Bribe Made."

⁶⁶ McKee testimony, Sp. Comm. 6/26/80 at 105.

⁶⁷ See, e.g., agreement dated February 1, 1973 between Tulane University and MBM for construction management services on the Tulane University Medical Center, expected to be worth about \$770,000. The contract was canceled as of May 31, 1974; see letter dated May 23, 1974 from Tulane Chancellor John J. Walsh to MBM. See also agreement dated December 20, 1973 between Southern Baptist Hospital and MBM for construction management services on a hospital, medical office building, parking facility, and apartment building, at an expected fee of about \$340,000. The contract was canceled in October 1974 because of the Hospital's difficulties in obtaining financing; see letter dated October 25, 1974 from Southern Baptist Hospital Executive Director Raymond C. Wilson to MBM Regional Manager Robert J. Cantrell.

⁶⁸ Harding testimony, Sp. Comm. 6/4/80 at 14. See United States v. Brown, 587 F.2d 187 (1979).

⁶⁹ Brown's firm, Gulf State Public Relations Co., was doing consulting work for Mauchly in 1970, at a time when Mauchly was actively seeking the project management contract for the proposed Louisiana Expressway. See MCM Monthly Prospect Report, Outstanding Proposals, June and July 1971, at 8. See also MCM check dated 11/10/70 for \$1,000 payable to Gulf State Public Relations Co., bearing the notation "October services."

and McKee approved the continuation of the arrangement with Brown.⁷⁰ Although the Commission did not have access to New Orleans bank records of MBM,⁷¹ it did find checks totalling \$6,750 to Brown from MBM in 1972-73, and checks totalling \$4,700 to Brown's public relations firm from MBM/MCM in 1970-73.⁷²

An expense account receipt of Daniel Shields's indicates that Shields, McKee, and Brown had dinner together in New Orleans on October 31, 1972.⁷³ Shields received a \$2,500 advance from MCM by check dated October 30, 1972.⁷⁴ Shields made out a personal check dated November 1, 1972 to "The McKeithen Campaign."⁷⁵ The check was for \$2,000. In 1972 McKeithen ran an independent campaign for the United States Senate.

Maryland. In 1970, MBM was seeking public contracts in Prince George's County, Maryland.⁷⁶ They apparently were subcontracts on jobs for which the Masiello firm was architect.⁷⁷ The sales effort for MBM was apparently performed by Anthony Mansueto.

⁷⁰ Harding testimony, Sp. Comm. 6/4/80 at 16.

⁷¹ The Commission does not know for a fact that MBM's New Orleans office had a New Orleans bank account. It probably did, since Harding had a personal bank account in New Orleans. See Harding personal check #194 dated 7/6/73 for \$35,000, discussed in Chapter II.

⁷² MCM checks dated 10/27/72, 11/8/72, and 1/17/73, and MBM checks dated 8/12/72, 9/28/72 and 2/16/73 each for \$500; MBM checks dated 7/19/72 for \$1,500, and 9/14/73 for \$900; MBM checks dated 10/24/73, 11/13/73, and 12/14/73 for \$450 each; for a total of \$6,750, all payable to J. Marshall Brown. The last four checks were jointly payable to Gulf State Public Relations Co. The checks payable to Gulf State Public Relations Co. were the following: MCM check dated 11/10/70 for \$1,000, MBM checks dated 1/19/72 for \$500, 2/23/72 for \$500, 4/5/72 for \$500, 7/19/72 for \$500, and 7/26/73 for \$1,700, for a total of \$4,700.

⁷³ Shields expense account record for period October 16 - November 3, 1972.

⁷⁴ MCM check #345 dated 10/30/72 for \$2500 payable to D.J. Shields, endorsed for deposit by Daniel J. Shields.

⁷⁵ Daniel J. Shields personal check dated November 1, 1972 for \$2,000 payable to the McKeithen campaign.

⁷⁶ See MBM Job No. 270-117, Final Estimate for the proposed detention center, Prince George's County, Maryland, awarded December 29, 1970. MBM Job Card.

⁷⁷ See, e.g., letter dated November 5, 1970 from Anthony E. Mansueto to Frank Masiello, re: "Proposed Detention Center, Prince Georges County-Maryland."

Mansueto received a \$2,000 MBM check dated October 15, 1970.⁷⁸ Mansueto's pocket diary for October 16, 1970 contained the entry: "2000 in AEM [Anthony E. Mansueto] acct for PGC [Prince George's County]."⁷⁹ Mansueto made out a personal check dated October 28, 1970 for \$2,000 payable to cash.⁸⁰ It appears from a later memorandum by Mansueto that the cash went to Frank Aluisi, a Prince George's County Commissioner.⁸¹ Mansueto received another \$2,000 MBM check dated October 29, 1970.⁸² The check requisition form bore the notation: "Arvid Eddy (Frank Francois) Prince George['s] County."⁸³ Mansueto made out another \$2,000 personal check dated October 28, 1970 payable to "Arvid Eddy - Treasurer."⁸⁴ Based upon the MBM check requisition form, it would appear that Eddy was the campaign treasurer for Frank Francois, a Prince George's County Commissioner.⁸⁵

The MBM checks to Mansueto were treated on MBM's books as advances to Mansueto.⁸⁶ When Mansueto thereafter was sent an audit confirmation request about his advance account, he responded with a memorandum labelled "PERSONAL AND CONFIDENTIAL" in which he objected to the balance shown in his "advance"

78 MBM check #7735 dated 10/15/70 for \$2,000 payable to Anthony Mansueto, recorded as an advance.

79 Mansueto pocket calendar, 10/16/70.

80 Anthony E. Mansueto personal check #191 dated October 28, 1970 for \$2,000 payable to cash.

81 Memorandum ("PERSONAL AND CONFIDENTIAL") dated January 16, 1973 from Anthony E. Mansueto to Andy [Andrew] Serell, concerning Mansueto's advance account.

82 MBM check #7808 dated 10/29/70 for \$2,000 payable to Anthony E. Mansueto; recorded as an advance.

83 Requisition form for MBM check #7808 dated 10/29/70 for \$2,000 payable to Anthony E. Mansueto.

84 Mansueto personal check #190 dated October 28, 1970 for \$2,000 payable to Arvid Eddy - Treasurer.

85 Requisition form for MBM check #7808 dated 10/29/70 for \$2,000 payable to Anthony E. Mansueto.

86 MBM Cash Disbursements Book shows the checks charged to advances to officers.

account.⁸⁷ Mansueto said that the balance in the account included

"disbursements for political and other contributions which were paid by me personally in the interest of the company and for which I received no credit....Obviously, I do not believe I should be charged for something I did in behalf of the company."

As exhibits to the memorandum, Mansueto attached several of his personal checks to politicians, including the ones for Francois and Aluisi.⁸⁸

On the same date as the Mansueto checks for Francois and Aluisi, Mansueto apparently invited Francois and Aluisi to attend a dinner in Washington, D.C.⁸⁹ The table arranged by Mansueto also included, according to Mansueto's pocket calendar, Frank Masiello, Barry Locke, and John A. Volpe, along with two people connected with the United States Postal Service and one person employed by the DMJM architectural firm.⁹⁰

⁸⁷ Mansueto 1/16/73 PERSONAL AND CONFIDENTIAL memorandum to Serell.

⁸⁸ Id.

⁸⁹ Mansueto pocket calendar, 10/28/70. The event was the annual dinner of the Big Brothers of the National Capital Area.

⁹⁰ Mansueto pocket calendar, page opposite 12/10/70.

APPENDIX C

MBM'S ATTEMPT TO WIN A
PROJECT MANAGEMENT CONTRACT
FOR THE UMASS/WORCESTER MEDICAL SCHOOL

In considering why the UMass/Boston project management contract was awarded to MBM in December 1969, it may be useful to consider steps that MBM took a few months later in an attempt to win a similar contract for the UMass/Worcester Medical School. Although the Commonwealth ultimately decided not to use an outside project manager for UMass/Worcester, an analysis of MBM's sales approach may shed further light on MBM's actions in obtaining the UMass/Boston contract.

MBM began its efforts to obtain the project management contract for the UMass/Worcester Medical School project in June of 1970, barely two months after MBM's UMass/Boston contract had been signed. MBM Vice President Jack Thomas wrote letters to BBC Director Walter Poitrast and A&F Commissioner Donald Dwight requesting that MBM be considered for appointment as project manager for UMass/Worcester.¹ Thomas sent copies of these letters to Anthony Mansueto, and Mansueto in turn forwarded copies to Endicott Peabody.

Peabody's partner Jeremiah Lambert sent a letter to Mansueto dated June 26, 1970 which said, in part:²

"We are fully prepared to assist MBM in connection with the Worcester Medical project and are not presently burdened by any conflict of interest. Chub [Peabody] will go forward at the appropriate time just as he did on the University of Massachusetts project.

When Lambert appeared before the Commission in 1980 and was asked what "the appropriate time" had been in regard to the UMass/Boston project, he said the phrase was just a figure of speech.³

Deputy A&F Commissioner Albert Zabriskie had certain responsibilities with regard to UMass/Worcester, and Peabody apparently talked with Zabriskie several

¹ Letter dated June 19, 1970 from Jack S. Thomas to Walter J. Poitrast; letter dated June 23, 1970 from Jack S. Thomas to Donald R. Dwight.

² Letter dated June 26, 1970 from Jeremiah D. Lambert to Anthony E. Mansueto.

³ Lambert testimony, Sp. Comm. 6/18/80 at 125-126.

times in July 1970.⁴ Peabody apparently met with Zabriskie in Boston on September 21, 1970 and again on October 7, 1970 with regard to UMass/Worcester.⁵

In preparation for the October 7, 1970 trip to Boston, Peabody jotted the following entry in his spiral notebook: "MBM a) Interest in Worcester (call Gordon)."⁶ "Gordon" presumably was UMass Trustee Robert D. Gordon, whom Peabody had contacted when MBM was seeking the UMass/Boston contract.⁷ Peabody also wrote the name "Toot Mazzani" on the same page of the spiral notebook.⁸ The Commission does not know who "Toot Mazzani" may have been, but it perhaps should be noted that Anthony Mansueto had apparently been in contact with Republican fundraiser Albert ("Toots") Manzi in reference to UMass/Worcester⁹ and that MBM officials have testified that MBM made a voluntary \$10,000 cash payment to Manzi on October 16, 1970,¹⁰ about which Peabody was consulted in advance.¹¹

On October 9, 1970 Peabody wrote a memo to his partner Jeremiah Lambert about Peabody's October 7 meeting with Zabriskie concerning UMass/Worcester.¹² According to the memo, Zabriskie was going to recommend use of an outside project manager to the new A&F Commissioner, Charles E. Shepard,¹³ even though "Shepard

⁴ Peabody law firm MBM tab card VII, entries for 7/20-21/70, 7/23/70.

⁵ Id., MBM tab cards IX and X, entries for 9/21/70, 10/7/70.

⁶ Memorandum headed "Boston Oct. 6 & 7th [1970]," Peabody spiral notebook.

⁷ See discussion in Chapter IV supra.

⁸ Peabody spiral notebook, "Boston Oct. 6 & 7th."

⁹ See, e.g., Mansueto pocket calendar, 7/6/70, 8/10/70, 10/13/70.

¹⁰ McKee testimony, Sp. Comm. 6/26/80 at 53. Mansueto testimony, P.A. 5/23/78 at 118-119.

¹¹ Mansueto testimony, P.A. 5/23/78 at 44. Peabody testimony, P.A. 3/29/78 at 22-23, 89, 92-93; Sp. Comm. 6/19/80 at 158, 164, 167, 208.

¹² Memorandum dated October 9, 1970 from Gov. [Endicott] Peabody to Mr. [Jeremiah D.] Lambert, concerning MBM.

¹³ Shepard became Acting A&F Commissioner on August 12, 1970 when Donald Dwight resigned to run for Lieutenant Governor. Shepard was named Commissioner when Acting Governor Francis Sargent took office as Governor in January 1971.

is opposed to this form of operation." Peabody continued, "It is very possible [that] the matter will be decided by former Commissioner Dwight, now a candidate for Lieutenant Governor, and he is very partial to MBM."

As previously discussed, MBM officials have testified that on October 16, 1970 MBM delivered \$10,000 in cash in a brown paper bag to Manzi for the Sargent-Dwight campaign.¹⁴ On October 13, 1970, when Mansueto discussed the payment with Endicott Peabody, Mansueto's pocket calendar made reference not only to that discussion about the payment but also to UMass/Worcester.¹⁵

On October 22, 1970 Mansueto wrote the following memorandum: "Re: Worcester Medical Center. Received call from Bill Masiello. Project ours after election per Zabriskie."¹⁶ Mansueto apparently relayed this intelligence to Jack Thomas, because on October 27, 1970 Thomas sent a memo¹⁷ to other MBM executives reporting that --

"Tony [Mansueto]'s latest information indicates that funds (\$700,000) are available for management services [on the UMass/Worcester project], and that MBM is 'in' once the decision is made to hire a consultant. No activity expected until after election day."

Despite these optimistic reports, there apparently was some question about whether a project management firm could be hired for the UMass/Worcester project under then-existing law. It will be recalled that, for UMass/Boston, a special provision was incorporated into the UMass/Boston appropriation authorization to permit outside project management.¹⁸ To accomplish the same purpose for UMass/Worcester, MBM apparently prevailed upon State Senator James A. Kelly, Jr. to file a bill authorizing the BBC "to appoint temporary consultants to expedite projects."¹⁹ The Kelly bill, S. 75, was filed on

¹⁴ See discussion in Chapter V, supra.

¹⁵ Mansueto pocket calendar, 10/13/70.

¹⁶ Memorandum [to files?] dated October 22, 1970 from Anthony E. Mansueto, "Re: Worcester Medical Center."

¹⁷ Confidential memorandum dated October 27, 1970 from Jack S. Thomas to Gerald McKee, Jr. concerning three projects "pending."

¹⁸ See Acts of 1969, c. 898, and discussion in Chapter IV supra.

¹⁹ On March 15, 1971 Jack Thomas wrote a memorandum to McKee, Mansueto, and Peabody attaching a copy of the bill (S.75) and remarking that Thomas thought that the bill had been "aimed at getting us onto the UMass/Worcester project."

October 28, 1970.²⁰ Two weeks earlier, MBM had given to Kelly a \$2,000 check for the Kevin H. White gubernatorial campaign²¹ (for which Kelly had been raising funds)²² and MBM had made out a \$2,000 check for State Senate Majority Leader Kevin B. Harrington²³ (whom Kelly was actively supporting for Senate President²⁴).

On October 29, 1970 Mansueto spoke with Peabody,²⁵ and on November 2, 1970 Peabody spoke with Zabriskie.²⁶ On November 3, 1970 Peabody wrote to Mansueto about his conversation with Zabriskie on November 2. According to Peabody's summary, Zabriskie said nothing would happen on the UMass/Worcester project until after election day but that "the blue-print which [Zabriskie] earlier told me about and which we discussed, is going forward."²⁷

Shortly after election day, Peabody again spoke with Zabriskie.²⁸ In a memorandum²⁹ summarizing a November 9, 1970 conversation with Zabriskie,

²⁰ Journal of the Senate.

²¹ MBM-Boston check #1822 dated October 19, 1970 for \$2,000 payable to William Masiello, endorsed to Kelly, who endorsed it to the Kevin White for Governor Committee.

²² Kelly testimony, P.A. 5/12/78 at 55.

²³ MBM-Boston check #1812 dated October 19, 1970 for \$2,000, payable to Kevin Harrington.

²⁴ Kelly testimony, P.A. 5/12/78 at 54. When Harrington won the contested Senate President race, he named Kelly chairman of the Ways & Means Committee. See discussion of these checks in Appendix F infra and in P.A. Report at 60-79.

²⁵ Peabody telephone records, 10/29/70.

²⁶ Id. 11/2/70.

²⁷ Letter dated November 3, 1970 from Endicott Peabody to Anthony E. Mansueto.

²⁸ Peabody telephone records, 11/9/70.

²⁹ Memorandum dated November 9, 1970 from EP [Endicott Peabody] to JDL [Jeremiah D. Lambert], "Re: MBM - UMass/Medical School," introduced as Peabody Exhibit 15, Sp. Comm. 6/19/80 at 202.

Peabody reported that --

"there is a 'highly' placed Massachusetts official who has some firm ideas as to what should be done about this matter and who is bound to be influential in the decision. I [Peabody] think we are well thought of by that official, and I am going to call again just before Thanksgiving to see what action is being contemplated. I will stay on top of this."

When Peabody testified in 1980 before the Commission, he was asked about this memorandum. He said he could not recall who the "highly placed official" was.³⁰

On November 19, 1970 UMass/Worcester Associate Dean John Stockwell wrote a letter expressing pleasure that a full-time construction management team was going to be established for the UMass/Worcester project.³¹ On December 8 and 9, 1970 Peabody was in Boston.³² On December 11, 1970 he sent a letter to Mansueto reporting that in several conversations with A&F [presumably with Zabriskie] Peabody had ascertained that MBM was still "being highly considered" for the medical school, although, Peabody added, "There is still a question as to whether a Project Manager has been authorized, but I believe this can be resolved favorably."³³

Peabody recommended that Mansueto attend a cocktail party on December 22, 1970 in Boston at which Zabriskie would be present. Peabody went on in the letter to say:

"I trust you will keep me informed of all that goes on in Massachusetts. Having experienced the jungle of politics in that state, I think I can tell you where all the pitfalls are. There is a great deal of work in that state outside of the University of Massachusetts, and if you call us in advance, we can help you."

As an example, Peabody said:

³⁰ Peabody testimony, Sp. Comm. 6/19/80 at 203-204.

³¹ Letter dated November 19, 1970 from John F. Stockwell to Walter J. Poitras. Presumably, Stockwell was referring to an outside construction management team; the BBC was still understaffed and thus incapable of fielding a full-time construction management team consisting solely of BBC employees.

³² Peabody law firm MBM tab card XII.

³³ Letter dated December 11, 1970 from Endicott Peabody to Anthony E. Mansueto, at 1.

"I am sorry you missed out on a Logan Airport matter. I still have two appointees of mine on the Port Authority and they might have been of some help had they known of my interest."

Peabody and Mansueto continued to pursue the UMass/Worcester contract. On December 15, 1970 -- a day on which Mansueto was in Palm Beach, Florida -- Mansueto's pocket calendar contained the entry: "Worcester Med. Ctr. - Kelly back."³⁴ And on January 6, 1971, Peabody again spoke with Zabriskie about UMass/Worcester.³⁵

Unfortunately for MBM, a series of newspaper articles appeared early in February of 1971 severely criticizing MBM's existing project management contract at UMass/Boston.³⁶ The articles led to the creation of the legislative committee, chaired by Senator DiCarlo and Representative Sirianni, to look into the contract.³⁷ These events apparently made it politically impossible for MBM to receive any more Massachusetts state contracts for a while. But in late August 1971, when MBM began to have reason to believe that it might emerge from the DiCarlo-Sirianni Committee unscathed, MBM again displayed interest in getting work at UMass/Worcester. MBM President McKee wrote a letter to Peabody on August 30, 1971 stating that MBM was about to acquire an old rival, Mauchly Construction Management ("MCM" -- formerly part of Mauchly Associates) and expressing hope that the combined MBM-MCM forces could win a project management contract at UMass/Worcester.³⁸ Although no project management contract as such ever was awarded for UMass/Worcester, MCM had already performed some CPM work at UMass/Worcester, and MCM received additional work there after being acquired by MBM.³⁹

³⁴ Mansueto pocket calendar, 12/15/70.

³⁵ See memorandum dated January 6, 1971 from E.P. [Endicott Peabody] to J.D.L. [Jeremiah D. Lambert], re: "MBM/University of Massachusetts at Worcester."

³⁶ See discussion in Chapter VII infra.

³⁷ See discussion in Chapter VII infra.

³⁸ Letter dated August 30, 1971 from Gerald McKee, Jr. to Endicott Peabody.

³⁹ Commission staff analysis of MBM and MCM contracts in Massachusetts.

APPENDIX D

MBM'S ATTEMPTS TO WIN
CONTRACTS REGARDING THE
MIDDLESEX COUNTY COURTHOUSE

Another demonstration of methods that MBM used in seeking contracts is provided by the Middlesex County Courthouse. MBM's attempts to obtain work there began in January 1970, less than one month after MBM won the UMass/Boston contract. The courthouse project had started years earlier and was experiencing severe difficulties.¹ The county commissioners decided to look for a construction consultant,² and MBM was interested. MBM conveyed its interest to Endicott Peabody,³ and Peabody promptly contacted all three county commissioners and their counsel.⁴ Peabody soon reported that he had "commitments from all three commissioners" to accept MBM's proposal to provide initial consulting services for a fee of approximately \$30,000.⁵ MBM was in fact awarded that initial contract on February 24, 1970,⁶ resulting in a fee to MBM of \$33,960 for less than two months' work which apparently was done in large part by Jack S. Thomas. The major services that MBM provided for the \$33,960 fee seem to have been a simple CPM schedule and an 11-page letter whose primary recommendation was that the commissioners engage a construction

¹ See, e.g., Sareen R. Gerson, "County Courthouse--from Beginning to Today," Lexington Minuteman, March 18, 1971, supplement.

² A copy of the commissioners' resolve was found in MBM's Middlesex County Courthouse file, but there appears to be no record of it in the commissioner's minutes.

³ Memorandum headed "County Court House and Jail," undated but probably January 28, 1970; Peabody spiral notebook.

⁴ Peabody law firm MBM tub card III, entries for #1/29/70, 2/2/70, 2/9/70, 2/10/70. Letter dated January 30, 1970 from Endicott Peabody to Gerald J. [sic] McKee, Jr., re: Middlesex County Courthouse.

⁵ Draft memorandum dated February 11, 1970 from Governor [Endicott] Peabody to J[eremiah] D. Lambert, concerning the Middlesex County Courthouse, at 1.

⁶ See letter dated April 21, 1970 from Jack S. Thomas for MBM to Middlesex County Commissioners, concerning Middlesex County Superior Courthouse, Conclusions and Recommendations, at 1.

manager for the project.⁷ Apparently seeing no conflict of interest, MBM began a two-year campaign to win such a construction management contract, which MBM expected to be far more lucrative than its initial consulting contract.⁸

Peabody was eager to assist MBM in its attempt to win the Middlesex County Courthouse construction management contract, believing that his efforts had been instrumental in producing the initial contract⁹ and that successful efforts of this nature should be rewarded above and beyond the normal retainer (as with the UMass/Boston contract).¹⁰ As it happened, however, the project came under criticism, and the Massachusetts Legislature in August 1970 refused to provide any additional funds for the courthouse project.¹¹

The State Senate's Committee on Counties came under the chairmanship, in January 1971, of Joseph J.C. DiCarlo. Less than a month later, DiCarlo co-sponsored an order calling for a legislative investigation of MBM's UMass/Boston project management contract,¹² and DiCarlo soon thereafter was appointed Senate Chairman of the resulting special investigative committee.¹³ As discussed more fully in Chapter VII, DiCarlo was eventually paid more than ten thousand dollars in cash by MBM. In return, DiCarlo produced a favorable committee report for MBM, enabling MBM to win over \$1 million worth of extension contracts of the UMass/Boston project. In addition, DiCarlo allegedly agreed to help MBM win the Middlesex County Courthouse construction management contract that MBM had long been seeking.

⁷ Thomas 4/21/70 letter to Middlesex County Commissioners, at 7-10.

⁸ Peabody 2/11/70 draft memorandum to Lambert indicates that the management contract fee was anticipated to be \$100,000 or more.

⁹ See memorandum dated May 7, 1970 from Gov. [Endicott] Peabody to Mr. [Jeremiah D.] Lambert, concerning MBM-Middlesex County contract.

¹⁰ See Peabody 2/11/70 draft memorandum to Lambert, and memorandum dated May 8 [1970] from "Chub" [Endicott Peabody] to "Jerry" [Jeremiah D. Lambert], concerning the fee arrangement for the Middlesex County contract.

¹¹ See "House Kills \$8.5m for Courthouse," Boston Globe, August 22, 1970.

¹² See discussion in Chapter VII infra.

¹³ See discussion in Chapter VII infra.

Since DiCarlo swore under oath that he did not take any steps to help MBM win the Middlesex County contract,¹⁴ it is appropriate to summarize some of the evidence on the matter. In late August of 1971, DiCarlo apparently was introduced by his colleague, Senator Ronald C. MacKenzie, to Daniel J. Shields and William F. Harding of MBM.¹⁵ Not long after this meeting, the first concrete arrangements were made which led to DiCarlo's alteration of the legislative report about MBM's UMass/Boston contract in return for money from MBM.¹⁶ Within a week of this August 1971 meeting, DiCarlo was quoted in the press as favoring an independent consultant for the Middlesex County Courthouse project.¹⁷ By October 1971, DiCarlo -- who had ascended to the Senate chairmanship of the Joint Rules Committee¹⁸ -- was quoted in several press reports as saying that he would not permit consideration by the Legislature of any bill to fund the completion of the courthouse unless the bill required the retention of an outside consultant to oversee the work.¹⁹ Moreover, DiCarlo was reported in the press to have a specific firm in mind: MBM.²⁰ In testimony before the Commission in 1980, DiCarlo flatly denied these press accounts from 1971, adding the observation that sometimes the press makes mistakes.²¹ While that observation is undoubtedly true, it is also true that

¹⁴ DiCarlo testimony, Sp. Comm. 6/3/80 at 98-102.

¹⁵ See letter dated August 30, 1971 from Gerald McKee, Jr. to Endicott Peabody, concerning meetings with Massachusetts officials. Shields and Harding had been President and Vice President of Mauchly Construction Management, Inc., which was then in the process of being acquired by MBM. Shields and Harding saw DiCarlo on behalf of the MBM/MCM combined firm.

¹⁶ See discussion in Chapter VII infra.

¹⁷ Shelly Cohen, "Bail-out for Courthouse," Medford Mercury and other papers, September 1, 1971.

¹⁸ Kenneth Sweeney, "\$21 million figure on Mdsx. Courthouse bill; DiCarlo wants more info," Lexington Middleman and other papers, October 21, 1971.

¹⁹ Id.; Shelly Cohen, "DiCarlo eyes safeguards," Medford Mercury and other papers, October 7-12, 1971.

²⁰ Shelly Cohen, "County Courthouse gains signatures," South Middlesex Daily News (Framingham), October 31, 1971.

²¹ DiCarlo testimony, Sp. Comm. 6/3/80 at 101-102.

the articles were by several reporters -- at least some of whom are well respected -- and they appeared over several months without any challenge at the time from DiCarlo.²²

Daniel Shields provided the Commission with an explanation of why DiCarlo was solicitous of MBM with regard to the Middlesex County Courthouse project. According to Shields's testimony, DiCarlo was to be paid in cash by MBM for DiCarlo's assistance on the Courthouse project.²³ DiCarlo eventually did let the courthouse bill through the Rules Committee without the construction management requirement,²⁴ but Shields explained that DiCarlo's change of attitude resulted from a disagreement between DiCarlo and McKee about whether the cash payment to DiCarlo for the courthouse assistance was to be part of -- or was to be in addition to -- the amount that DiCarlo was being paid for altering the legislative report on MBM's UMass/Boston contract.²⁵

MBM President Gerald McKee, Jr. has denied that MBM ever discussed paying DiCarlo in return for help that DiCarlo might render in MBM's attempts to win the Middlesex County Courthouse contract or other contracts. However, McKee and others testified at the DiCarlo-MacKenzie trial that DiCarlo said, during a meeting in New York after DiCarlo's report on the UMass/Boston contract had been completed, that DiCarlo would not help MBM win other contracts unless MBM paid him promptly.²⁶

²² These articles were among those sent to DiCarlo's office by his clipping service.

²³ Shields testimony, Sp. Comm. 6/2/80 at 78-85.

²⁴ The funding authorization bill for the courthouse was passed by the Legislature on January 31, 1972 as Acts of 1972, c.4.

²⁵ Shields testimony, Sp. Comm. 6/2/80 at 81-85.

²⁶ McKee testimony, 5 DiC 1/31/77 at 73-86; Shields testimony, 15 DiC 2/14/77 at 89-94, 143.

Although MBM never did receive the construction management contract that it sought for the Middlesex County Courthouse, it did receive a contract in February 1972 to act as expert witness for the Middlesex County Commissioners in litigation over problems in the courthouse construction project.²⁷ That contract, which was apparently never noted in the minutes of the Middlesex County Commissioners' meetings, generated almost \$100,000 in fees for MBM.²⁸

²⁷ See letter dated February 11, 1972 from Middlesex County Commissioners' counsel R. Robert Popeo to Chairman John F. Dever, recommending the approval of MBM's proposed contract; Proposal dated February 3, 1972 from MBM to Middlesex County Commissioners, concerning construction consulting services.

²⁸ Special Commission staff analysis of payments to MBM for work on the Middlesex County Courthouse. See also Shelly Cohen, "County signs no limit contract with consultants," South Middlesex Daily News (Framingham), February 18, 1972.

APPENDIX E

MBM'S SUCCESSFUL EFFORTS
REGARDING ITS "DELAY CLAIM" IN 1972

The UMass/Boston project was built on a sanitary land-fill. The nature of the site made it less expensive for the Commonwealth to acquire than other land would have been, but it also increased the development costs somewhat. Moreover, one characteristic of sanitary land-fills is that they may have subsurface deposits of methane gas. This was the case at the UMass/Boston site, and it was a fact of which the UMass/Boston planners had been aware and which they apparently took into account in their planning. Nonetheless, some individuals -- including at least one newspaper columnist -- became convinced that "lethal methane gas" on the UMass/Boston site was potentially explosive.¹ As a result of their concern, they persuaded the Legislature in August 1970 to suspend certain construction activities on the UMass/Boston site.² The suspension lasted for about five months while independent studies were conducted about the methane gas situation and what to do about it.

Although certain construction activities were thus delayed, other design and review activities continued. Indeed, enough activity continued that BBC Project Director James Cusack later concluded that the methane studies had not substantially delayed completion of the project.³

¹ See, e.g., Wendell Woodman, "UMass Trustees Knew of Methane Concentrations at Columbia Point," New England News Service Release dated July 16, 1970, and "Columbia Point Out as Campus Site, Watertown Land Is Bought," New England News Service Release dated July 17, 1970. Notes of 10/11/79 interview of Wendell H. Woodman by Special Commission staff, at 1.

² Acts of 1970, c. 633, approved August 7, 1970. Section 2, item 8071-66 of Chapter 633 suspended building construction.

³ Memorandum dated December 14, 1972 from BBC Project Director James J. Cusack to BBC Director Walter J. Poitras, opposing MBM's delay claim.

Nonetheless, MBM decided that it was entitled to a "delay claim" for the "extra expenses" it incurred as a result of the legislatively imposed delay on the project. Why MBM should have been entitled to any extra compensation is unclear. Under the fixed fee portion of MBM's contract, the salaries of specified MBM employees were being paid in full.⁴ Since MBM was subsequently granted extensions to its contract, those salaries presumably were fully covered for the entire period of those employees' tenure on the project. As to MBM employees not covered under the fixed fee portion of MBM's contract, they were covered under the "reimbursable" section of the contract, pursuant to which MBM was reimbursed in full for the salary expenses and given a 20 percent mark-up (presumably for profit) as well.⁵ In any event, in February 1972, MBM filed a "delay claim" in the amount of \$95,700.⁶ This amount apparently was determined by doubling MBM's supposed additional salary expenses from the delay.⁷ Although MBM pressed for approval of the delay claim, it was still not approved as of November 1972.⁸

MBM's financial situation by November 1972 was precarious, perhaps even

⁴ See Contract for Consultant Services no. 601, Massachusetts State Project no. U67-4 #2A, between the BBC and MBM, at 13.

⁵ See Contract for Consultant Services no. 601, Massachusetts State Project no. U67-4 #2A, between the BBC and MBM, at 17.

⁶ Letter dated February 16, 1972 from Jack S. Thomas to BBC Director, Walter J. Poitras, concerning a request for additional payment due to project delay.

⁷ Id. at 3.

⁸ See memorandum dated November 3, 1972 from Jack S. Thomas to G[erald] McKee, Jr., concerning Phase I extension and the delay claim.

desperate.⁹ In order to come up with funds to pay such basic expenses as electricity, telephone, photocopying, and security, MBM felt it imperative that the delay claim be approved post haste.¹⁰ MBM's Boston manager, Jack Thomas, urged MBM President McKee to reduce MBM's delay claim from twice direct salary expense (\$95,700) to either direct salary expense plus 20 percent (\$57,000) or just direct salary expense (\$48,000), without a markup in order to expedite approval.¹¹ Furthermore, MBM considered prompt approval of the delay claim to be so urgent that Thomas and McKee asked former Governor Peabody to fly to Boston to participate in a sort of summit meeting with the responsible state officials.¹²

It seemed clear to MBM that the key person in the decision-making process would be Frederick J. Kussman, the administrative assistant to BBC Director Walter Poitras. Kussman was generally responsible for fiscal matters within the BBC,¹³ and he had been helpful to MBM in the past. In particular, he had helped MBM to draft MBM's proposal to the BBC for Phase II of the UMass/Boston project;¹⁴ he had apparently chosen not to penalize MBM or declare it in breach of its UMass/Boston Phase I contract when MBM improperly retained for its own use funds that it was supposed to pass on to subcontractors; and he had prepared the first draft of the DiCarlo-Sirianni committee report which, even if it were not

⁹ Id. at 2; see also McKee testimony, Sp. Comm. 6/26/80 at 85.

¹⁰ Thomas 11/3/72 memorandum to McKee, at 1-2.

¹¹ Id. It should be noted that "direct salary expense" included not only the actual salary, but also applicable Social Security, state unemployment, federal unemployment, group insurance, vacations, paid holidays, and sick leave.

¹² See letter dated November 2, 1972 from Jack S. Thomas to Endicott Peabody, concerning a meeting on November 9, 1972 about the delay claim.

¹³ See notes of 12/14/79 interview of Jack S. Thomas by Special Commission staff, at 8.

¹⁴ Id. at 15.

as favorable as MBM wanted, at least did not conclude that MBM's UMass/Boston contract was illegal or excessive or was to be terminated immediately.¹⁵ McKee described Kussman as "MBM's interface with BBC for all contractual matters" and as a "strong advocate" of MBM's work and of construction management in general.¹⁶ In return, MBM had been good to Kussman. For example, in January 1972, MBM gave \$2,000 in cash to Kussman, according to Jack Thomas.¹⁷ And on November 8, 1972, Thomas asked McKee's permission for MBM to underwrite Kussman's attendance at a conference in Puerto Rico scheduled for December 1972.¹⁸

On November 9, 1972 a conference on the delay claim took place in Boston among Peabody, Thomas, Kussman, Poittrast, Zabriskie, Assistant Transportation Secretary William Najam, A&F engineer Philip Dick (who had recently left MBM's payroll)¹⁹ and MBM project manager C. Ronald Rabin. MBM seems to have proposed that the delay claim be settled for \$57,000,²⁰ but no firm agreement was reached at the meeting.²¹

¹⁵ See discussion in Chapter VII infra.

¹⁶ Notes of 2/15/80 interview of Gerald McKee, Jr. by Special Commission staff, at 1.

¹⁷ Thomas testimony, 12A DiC 2/9/77 at 27; Thomas 12/14/79 written statement at 2. Thomas said that he went with William Masiello to Kussman's home, that Thomas gave the cash to Masiello to give to Kussman, and that Thomas had no reason to believe that Masiello did not follow through as agreed.

¹⁸ Memorandum dated November 8, 1972 from Jack S. Thomas to G[erald] McKee, Jr. The Commission has no evidence on whether Kussman went to the conference or on whether MBM paid anything in that connection.

¹⁹ Notes of 2/5/80 interview of Philip Dick by Special Commission staff, at 1. It is not clear whether Dick was ever really an MBM employee as such, or whether he was put on MBM's payroll as an accommodation to BBC project engineer James J. Cusack who wanted Dick to work on the project. Dick had previously been employed by the state Department of Mental Health.

²⁰ See letter dated November 15, 1972 from Endicott Peabody to Jack S. Thomas.

²¹ Id.

After the meeting, according to Thomas, there was a discussion between Thomas and McKee about how to get the delay claim resolved promptly in MBM's favor.²² According to Thomas, McKee instructed Thomas to offer money to Kussman in return for Kussman's expediting the resolution of the delay claim in MBM's favor.²³

Thomas, who currently lives and works in Kuwait, did not come to the United States to testify before the Commission. But in the London interview in 1979 with Commission staff at which this topic was discussed, it was Thomas who volunteered the information; the Commission had not asked Thomas anything about the delay claim. Thomas explained that he had not previously revealed the information because he had not wanted to hurt Kussman, whom Thomas regarded as one of the few capable individuals within the BBC. Despite his feeling for Kussman, Thomas was willing to swear to his account, and he executed a written statement repeating it.²⁴

When McKee was shown Thomas's written statement and a transcript of Thomas's oral statement on the matter, McKee pronounced it untrue.²⁵ Shortly thereafter, McKee met with Thomas in the Middle East and expressed his views to Thomas on the subject.²⁶ Nonetheless, Thomas stuck to his account, insisting that what he had told the Commission staff was what he remembered. Since Thomas had worked with and apparently been close to McKee for some twenty years,²⁷ Thomas

22 Written statement dated December 14, 1979 executed by Jack S. Thomas in London, England, concerning the delay claim, at 1.

23 Id.

24 Thomas 12/14/79 interview; Thomas 12/14/79 written statement.

25 McKee 2/15/80 interview at 2-3.

26 See McKee testimony, Sp. Comm. 6/26/80 at 87-89.

27 Thomas testimony, 10 M/M 2/26/79 at 42.

apparently felt very strongly that this account was true.²⁸

In any event, according to Thomas, Kussman accepted MBM's offer of money in return for expediting the delay claim, and it was agreed that \$2,000 would be the payment to Kussman.²⁹ The Commission wished to question Kussman about this and other matters, but Kussman asserted his privilege against self-incrimination.³⁰

An American Express receipt in MBM's files indicates that Thomas met with Kussman at the Point After lounge in Boston on November 13, 1972. As it happens, the BBC's approval (by what appears to be a signature stamp of Deputy Director George T. Rushton -- a signature stamp which Kussman presumably was authorized to use) of MBM's delay claim is dated November 13, 1972.³¹ The claim quickly was approved, in turn, by A&F and by the Office of Transportation & Construction,³² and on November 16, 1972 Kussman signed a reservation of funds form in regard to the delay claim.³³ The Commonwealth's check to MBM was dated November 30, 1972.³⁴

²⁸ McKee said that perhaps Thomas had misunderstood an instruction to "let Freddie keep half" -- by which McKee would have meant that MBM would compromise its delay claim by 50 percent, benefitting the BBC. McKee 2/15/80 interview, at 3. One may wonder how Thomas, who had worked so long for McKee, could have so misunderstood such an instruction.

²⁹ Thomas 12/14/79 written statement, at 1.

³⁰ Testimony of Frederick J. Kussman, Sp. Comm. 4/25/79 at 4-24.

³¹ Memorandum of Approval #73-36, dated November 13, 1972 from Walter J. Poitras (signed by George T. Rushton) to the Secretaries of Administration and of Transportation and Construction, concerning MBM's compensation claim for methane gas delay.

³² Memorandum of Approval #73-36, approved by Secretary of Transportation and Construction Alan Altshuler on November 15, 1972, and by Secretary of Administration William I. Cowin on November 20, 1972.

³³ Commonwealth of Massachusetts, reservation of funds form dated 11/16/72, for claim for additional compensation...payable to MBM.

³⁴ Commonwealth of Massachusetts check #318535 dated 11/30/72 payable to MBM. The claim was settled for \$47,862.15 -- MBM's "direct salary expense."

MBM soon began its payments to Kussman. The first payment -- for \$1,000 -- was made by a check dated December 19, 1972 on the account of Equipment Development, Inc. ("EDI"), a wholly-owned subsidiary of MBM.³⁵ The check was signed by Thomas who -- in addition to being MBM's Boston manager -- was President of EDI. The address of EDI shown on the check was the same as that of MBM's Boston office. The next payment to Kussman was by an EDI check dated March 9, 1973 for \$500.³⁶ A third payment, for \$250, was apparently made in 1974 by means of a check on an MBM bank account in Puerto Rico; in 1974, Thomas was managing MBM work in Puerto Rico, and he allegedly made his third payment when Kussman -- accompanied by William Masiello -- visited MBM's Puerto Rico office.³⁷ According to Thomas, these payments totalling \$1,750 were made solely on account of Kussman's having expedited MBM's UMass/Boston delay claim.³⁸

Kussman admitted in 1977 that he had received the payments,³⁹ but he gave a very different explanation about why he was entitled to the money. At an administrative hearing in 1977, Kussman testified under oath that the \$1,750 was payment for his acting as a consultant for EDI in connection with a project in Chicago, Illinois.⁴⁰ Kussman testified that he had no idea that EDI was related to MBM, although he knew that EDI's President, Thomas, was the MBM

³⁵ EDI check #195 dated December 19, 1972 for \$1000 payable to Frederick J. Kussman.

³⁶ EDI check #206 dated March 9, 1973 for \$500 payable to Frederick J. Kussman.

³⁷ Thomas 12/14/79 written statement, at 2.

³⁸ Id.

³⁹ In the matter of Frederick J. Kussman, administrative hearing before Marie Jackson, hearing officer.

⁴⁰ Id. at 2-23 to 2-27.

Vice President in charge of MBM's Boston office.⁴¹ Kussman apparently took the administrative hearing seriously. At Kussman's behest, MBM President McKee wrote a letter supporting Kussman's position.⁴² Kussman was found by the hearing officer to have engaged in no wrong-doing with regard to the money from EDI/MBM.⁴³

Kussman's testimony and McKee's letter to the administrative hearing were both knowingly untrue, according to Thomas.⁴⁴ The only work that Kussman ever did for MBM in Chicago, Thomas said, was to provide a helpful recommendation for MBM when MBM applied for the largest contract that MBM was ever to receive, the \$8 million Chicago School Board contract.⁴⁵ EDI had absolutely nothing to do with that or any other Chicago job, according to Thomas, and Kussman was given only expenses and perhaps a per diem for his help in Chicago, Thomas said.⁴⁶ As for McKee's letter, Thomas said that McKee sent him a copy of it, suggesting that Thomas also send a letter supporting Kussman, but Thomas refused to submit an untrue letter and therefore sent nothing for the administrative hearing.⁴⁷

⁴¹ Id. at 2-23 to 2-24, 2-27.

⁴² Letter dated March 9, 1977 from Gerald McKee, Jr. to Frederick J. Kussman, concerning Kussman's work for EDI.

⁴³ Report of Hearing Officer Designee, Matter of Frederick J. Kussman, 9/7/77 at 8-9.

⁴⁴ Thomas 12/14/79 interview, at 16; Thomas 12/14/79 written statement, at 2.

⁴⁵ Thomas 12/14/79 written statement, at 2.

⁴⁶ Id.; Thomas 12/14/79 interview, at 14.

⁴⁷ Thomas 12/14/79.

APPENDIX F

MBM'S FEE FOR WORK AT THE
WORCESTER COUNTY JAIL

In early 1970 the Worcester architectural firm of Masiello & Associates had a contract for work regarding the Worcester County Jail. Masiello, in turn, recommended to the Worcester County Commissioners on March 25, 1970 that MBM be hired to do cost control work on the jail. On March 31, 1970 the Commissioners authorized Masiello & Associates to hire MBM as cost control consultant for a fee not to exceed \$20,000.²

In November 1971 MBM Vice President Jack Thomas sent a memorandum to MBM Vice President Anthony Mansueto about MBM's fee for work on the Worcester County Jail.³ The memorandum says:

"The fee for the Worcester County Jail was slightly over \$19,000. Our costs @ 2 1/2 DSE, plus out-of-pocket expenses amounted to \$9,000. It appears that the Fee you established was about right -- all things considered."

This memorandum suggests that MBM received an extremely lucrative fee on this public project, with a profit margin similar to what MBM expected to make on the UMass/Boston contract.⁴ The cryptic language in the memorandum raises questions about why a \$10,000 profit on a \$19,000 county contract should have been "about right -- all things considered."⁵

1 See proposal dated March 25, 1970 from MBM to Masiello and Associates, "Re: Jail Facility, Worcester County."

2 Letter dated March 31, 1970 from Paul X. Tivnan, Chairman of the Worcester County Commissioners, to Masiello & Associates, authorizing the hiring of MBM.

3 Memorandum dated November 22, 1971 from Jack S. Thomas to A[nthony] E. Mansueto, concerning the Worcester County Jail.

4 See undated MBM document, "UMass Boston Campus, 459-004, Summary of Budget," introduced as McKee Exhibit 7, Sp. Comm. 6/26/80 at 38; see also discussion in Chapter VI.

5 Indeed, one might conclude that MBM's normal profit was encompassed within the 2 1/2 multiplier of direct salary expense, since that is the basis that MBM used for its total fee for other projects. See, e.g., Thomas 11/3/72 memorandum to McKee concerning Phase I extension and the delay claim. It is unclear why Thomas said that the total fee was "slightly over \$19,000" since other documents indicate that MBM was paid exactly \$20,000 for work on the Worcester County jail, as outlined later in the text. Perhaps MBM had two contracts in relation to the jail.

One possible reason why a \$10,000 excess fee would have been "about right" -- all things considered" is that between October and November of 1971, MBM had had to generate \$10,000 in cash, apparently for political payments in Massachusetts.⁶ Another explanation of where the extra money may have gone was provided to the Commission in testimony by William Masiello.

According to Masiello, he had a dinner meeting with Anthony Mansueto during the summer of 1970 at which MBM's billings on the Worcester County Jail project were discussed.⁷ Masiello testified that at that dinner he suggested to Mansueto that MBM falsely inflate by \$4,000 an invoice that it was about to submit; Masiello pledged that he would approve the invoice for payment by Worcester County.⁸

According to Masiello, he proposed that the \$4,000 be given as political contributions to two fundraising projects that Masiello was working on for Senator James A. Kelly, Jr. Those projects were Boston Mayor Kevin H. White's gubernatorial campaign and State Senate Majority Leader Kevin B. Harrington's attempt to become Senate President.⁹ Kelly was a key supporter of Harrington and expected to be named to the powerful post of Senate Ways & Means Chairman if Harrington became Senate President.¹⁰ Kelly was also playing an active role in White's campaign to become Governor.¹¹

According to Masiello, Mansueto agreed to this proposal to inflate MBM's bill and make the contributions,¹² and on August 31, 1970, MBM submitted an invoice to Masiello & Associates for \$11,071.85 which included, according to Masiello,

⁶ See discussion in Chapter VII.

⁷ William Masiello testimony, Sp. Comm. 6/24/80 at 15-16.

⁸ William Masiello testimony, Sp. Comm. 6/24/80 at 16-17.

⁹ Id. at 17.

¹⁰ Id.; Kelly testimony, P.A. 5/12/78 at 54.

¹¹ Kelly testimony, P.A. 5/12/78 at 55.

¹² William Masiello testimony, Sp. Comm. 6/24/80 at 18.

\$4,000 for work not performed. Masiello approved the invoice and submitted it to the Worcester County Commissioners on September 21, 1970.¹³

Payment to MBM was made by a check dated October 2, 1970. Masiello testified that he personally delivered the check to Mansueto in Kelly's presence, on the evening of October 13, 1970.¹⁴

On the following day (October 14, 1970) Kelly and Masiello met with Mansueto at MBM's Boston office. At one time or another, this meeting has been testified about by all of the participants.¹⁵ They agree that contributions to Harrington and to the White campaign were discussed and that, as a result of those conversations, MBM corporate checks were made payable to Harrington and to the White campaign.¹⁶ Each of those checks was for \$2,000.¹⁷

According to Masiello, the Harrington check was taken by Kelly and Masiello to the State House, where Kelly went into Harrington's inner office to leave off the check.¹⁸ The check was endorsed and cashed at Harrington's bank in Salem.¹⁹ Unfortunately for Harrington, the check came to light late in 1977.²⁰ The check was illegal on its face, since the law prohibits

¹³ Id. at 18-20; MBM invoice no. 8121 dated August 31, 1970 to Masiello & Associates, "Re: Schematic Estimate, Worcester County Jail Facility," in the amount of \$11,071.85. Letter dated September 21, 1970 from William V. Masiello to Worcester County Commissioners, "Re: Worcester County Jail."

¹⁴ William Masiello testimony, Sp. Comm. 6/24/80 at 22-23; Check #1018 on the account of Worcester County Prison Colony Loan Act of 1969, dated October 2, 1970, payable to MBM in the amount of \$11,071.85.

¹⁵ Mansueto testimony, P.A. 5/23/78 at 52-56; Kelly testimony, P.A. 5/12/78 at 22-31, 43-51; William Masiello testimony, 24 M/M 3/23/79 at 67-90; Sp. Comm. 6/24/80 at 25-32.

¹⁶ Mansueto testimony, P.A. 5/23/78 at 54-55; Kelly testimony, P.A. 5/12/78 at 33, 43-45; William Masiello testimony, 24 M/M 3/23/79 at 83-86; Sp. Comm. 6/24/80 at 25-27.

¹⁷ MBM-Boston check #1812 dated October 19, 1970 for \$2000, payable to Kevin Harrington. MBM-Boston check #1813 dated October 19, 1970 for \$2000 payable to Kevin White; check #1813 was voided -- see below.

¹⁸ William Masiello testimony, Sp. Comm. 6/24/80 at 27.

¹⁹ Affidavit dated May 12, 1978 executed by Salem Savings Bank Vice President George W. Olson, at 1-2; this affidavit was Appendix 39 to P.A. Report.

²⁰ Information about this check and other MBM political payments in Massachusetts was made public with the release (on December 29, 1977) of the impounded bench conference that had occurred in the DiCarlo-MacKenzie trial on February 1, 1977. See Chapter VIII.

the giving of corporate funds to politicians and the receipt of such funds.²¹ Harrington reportedly had been planning to run for Governor in 1978, and he denied at the Post Audit Subcommittee hearings in 1978 that he had received or cashed the check.²² His testimony was questioned, since the endorsement appeared to be his signature and since it seemed unlikely that anyone else could have been mistaken for Harrington -- who is approximately 7 feet tall -- at Harrington's bank in Salem.²³ A handwriting analyst engaged by the Post Audit Subcommittee concluded that the endorsement on the check was, in the analyst's expert opinion, Harrington's handwriting.²⁴ Harrington thereafter did not run for governor and did not seek re-election to the State Senate.

The MBM corporate check to White could have been equally embarrassing, except that White's fundraisers recognized the problem posed by a corporate check and consequently refused to accept the check, according to Masiello.²⁵ MBM voided the check and made out a new one, payable to Masiello. This substitute check might, on its face, have seemed a legitimate payment of a business expense, although it was not, according to both Masiello and MBM witnesses.²⁶ Masiello testified that, on Kelly's instructions, Masiello endorsed the check over to

²¹ G.L. c.55 s.8.

²² Testimony of Senate President Kevin B. Harrington, P.A. 4/11/78 at 6, 22, et passim.

²³ See P.A. Report at 72-79.

²⁴ P.A. Report at 73-74; P.A. Report, Appendix 40, Report on the Signature of Kevin Harrington dated June 5, 1978 from handwriting expert Elizabeth McCarthy to Representative Gerald Cohen, Chairman of the Post Audit Subcommittee.

²⁵ William Masiello testimony, Sp. Comm. 6/24/80 at 28-29.

²⁶ Id. at 29; Mansueto testimony, P.A. 5/23/78 at 53-55; McKee testimony, P.A. 3/22/78 at 87-89, 99, 101, 103.

Kelly, and Kelly in turn endorsed it to the White campaign.²⁷ In theory, the endorsements turned it into a personal contribution by either Kelly or Masiello. (It was apparently reported as a contribution by Kelly.)²⁸ Based upon the foregoing testimony, it was an illegal, laundered corporate contribution from MBM.²⁹

Although MBM's contract authorized a fee of up to \$20,000 MBM had only billed for \$11,071.85. According to Masiello's testimony, the remaining \$8,928.15 was claimed by means of a fraudulent invoice by MBM, with the proceeds to go \$5,000 to Masiello and the balance to MBM.³⁰ Masiello testified to the Commission that Mansueto agreed to this idea,³¹ so MBM submitted the invoice,³² Masiello approved it,³³ and the \$8,928.15 was paid to MBM on June 8, 1971.³⁴ MBM never paid Masiello his \$5,000 share, according to Masiello's testimony.³⁵

27 William Masiello testimony, Sp. Comm. 6/24/80 at 29.

28 See P.A. Report, Appendix 38, Citizens' Research Foundation Listing of Political Contributions of \$500 or More in 1970, edited by Herbert E. Alexander and Katherine C. Fischer, entry for contributions filed in Massachusetts, James A. Kelly, Jr.

29 P.A. Report at 67-69. In addition to being illegal on MBM's part, it would have been illegal for the White campaign to have accepted the check if it recognized that it was really a laundered corporate contribution from MBM rather than a bona fide personal contribution from Kelly or Masiello. G.L. c.55 ss.8, 10.

30 William Masiello testimony, Sp. Comm. 6/24/80 at 32-33.

31 Id.

32 MBM statement to Frank R. Masiello, Jr. and Associates referencing invoice #8272 dated 12/31/70 and #8424 dated 3/22/71 in the amount of \$8928.15 for job no. 449-039.

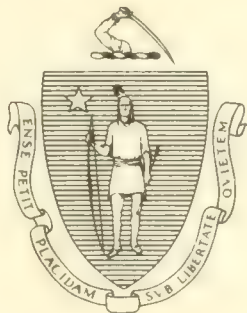
33 Letter dated May 26, 1971 from William V. Masiello to Worcester County Commissioners, concerning the approval of an invoice from MBM.

34 Check #1025 on the account of Worcester County Prison Colony Loan Act of 1969, dated June 8, 1971 payable to MBM in the amount of \$8928.15.

35 William Masiello testimony, Sp. Comm. 6/24/80 at 33-35.

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Final Report
To The General Court
Of The Special Commission
Concerning State And County Buildings

December 31, 1980

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VOLUME III

DESCRIPTION OF FINDINGS IN INDIVIDUAL CASES: AWARD OF DESIGN CONTRACTS

TABLE OF CONTENTS

<u>A New Campus For Holyoke Community College</u>	1
Background of the Holyoke Project	2
The DMJM/Masiello Relationship	4
DMJM's Interest in Massachusetts	4
"An Architect Who Was Politically Connected"	5
Masiello's Strategy to Win A Contract	6
"Payment of Money in Consideration for Obtaining Contracts"	7
The Selection Process - Official and Unofficial	9
A Call From Toots Manzi	10
"He Would Completely Wash His Hands of Me"	10
What Manzi Required	11
Masiello's Trip to California	12
Masiello's Guidelines: No Money Up Front	13
Masiello's Negotiations with Manzi	14
The Mechanics of Making the Contribution	15
Masiello Comes to Terms with Manzi	16
The Acquisition of the Contract	17
Smith Meets Manzi and Makes the Deal	18
Manzi Recommends MBM	19
The DSB Interview	20
The Commissioner's Selection	21
The Project Begins	23
Manzi's Weekly Calls to Masiello	24

DMJM's First Payment to Manzi	26
Manzi Monitors for Payments to DMJM	26
DMJM's \$5,000 Check	27
How the Check was Cashed	28
The Delivery to Manzi: "Is That All?"	29
Preparation of Plans and Specifications	30
The Masiello - DMJM Contract Dispute	31
DMJM's Differences with Manzi	32
The Masiello - DMJM Meeting in Washington in June, 1970	33
The Sonesta Hotel Meeting in July, 1970	34
The BBC Meeting on Costs	35
The Second Delivery to Manzi	36
"What in Hell am I Going to Do with Five-Dollar Bills?"	37
Manzi's Pressure Continues	39
"Deadbeats"	39
The Project Goes Forward	40
"I am Under a Lot of Pressure from My People"	41
DMJM's Third Delivery to Manzi	43
The California Cashier's Checks	43
Masiello's Continuing Contract Dispute with DMJM	44
Kussman Reviews the Contract for Masiello	45
Masiello's Further Negotiations with DMJM	46
DMJM's Fourth Delivery to Manzi	48
More Cashier's Checks	49
Further Masiello - DMJM Negotiations	51
DMJM's Fifth Payment to Manzi	52
DMJM's Continued Services for Phase II	53
Masiello Uses Manzi's Leverage over DMJM	53
Masiello Uses Influence in the BBC as Leverage over DMJM	54
DMJM's Sixth Delivery to Manzi	56
Masiello's Trip to California	58
The End of the Masiello - DMJM Relationship	60
Conclusion	63

<u>Masiello: If A Hand Is Open</u>	11
The Masiello Strategy: Filling the Open Hand	22
Masiello's Background	44
The Public Relations Approach	55
Winning and Dining	66
Masiello's Record of Obtaining State and County Projects	66
Brief History of the Firm	66
Public Architecture the Main Work of the Firm	77
The Investigation	14
Cash Generation	17
<u>Frank Masiello in the 1960's: The Education of A Political Architect</u>	23
Introduction	23
The Best Way to Continue Contracts	24
The Connelly School: A Very Slim Year	27
The Gentile School Project	28
MCI Norfolk: A Job Not Worth Going After	31
Manzi Puts Pressure on Masiello	32
"This Is Coming Out of My Hide"	33
More Money Authorized for the Gentile Project	35
Over Two Million Dollars in Design Fees for the Masiello Firm	35
<u>How Masiello Used Political Contributions As "Door Openers"</u>	
<u>To Suffolk County Contracts</u>	37
Introduction	37
Masiello's Political Fundraising Activities: The Door Opener	37
Vey's Fundraising Activities: The Political Boiler Room	40
The Dudley - Harrison Fire Station	44
An Unusual Designer Selection Procedure	44
An Erroneous Fee Calculation by Vey in Masiello's Favor	46
A Phony Change Order to Fund a Political Contribution	47
The Charles Street Jail/Deer Island Project	50
Another Unusual Selection Procedure	50
The Connection Between Contributions and Contracts	53
Keeping the City "Out of the Prison Business"	54
Overpayment of Design Fees Through Padded Time Records	55
"I Became Part of His Scheme"	58

Designing A Summer Home for Sheriff Eisenstadt	59
A "Large, Assumed Home"	59
Taxpayers Foot the Bill	61
Conclusion	61
<u>The Masiello Firm's Series of Contracts with Worcester County</u>	65
<u>Shrewsbury Housing Authority</u>	88
Introduction	88
One Version of the SHA Selection Process	88
The Possibility of a New Selection Procedure	91
William Masiello's Pursuit of SHA Work	92
An Increase in Fees for the Masiello Firm	96
Payments to Masiello & Associates and Payments on a Promise	98
<u>Taunton Housing Authority</u>	105
Introduction	105
Background to the Contract Award	106
Payments	108
Fundraising	111
Kitchen Cabinets	112
<u>Fall River Housing Authority</u>	115
<u>Masiello's Strategy to Win the Springfield Mental Health Center Contract</u>	122
Introduction	122
The Unexpected Loss of the Bristol County Jail	122
The Beginning of A New Strategy	124
Truce Discussions	124
Making Peace With Zuchero	125
Becoming One of Three	126
"Serenading" Kerr for His DSB Vote	126
Lining Up the Vote of the BBC	127
Masiello Re-Contacts Zuchero	128

The Final Step in the Plan	130
Input Into Designer Selection: Whose Checkmarks	132
The Winning of the Springfield Project	134
Masiello Makes Good on His Commitment	135
The Project Dwindles to a Halt	138
Conclusion	138

A NEW CAMPUS FOR HOLYOKE COMMUNITY COLLEGE

On March 25, 1980, Frank R. Masiello, Jr., became the first witness to testify in public before the Special Commission about corruption in the award of design contracts for state projects. That day, he testified that the Los Angeles architectural firm of Daniel, Mann, Johnson, Mendenhall (known in the trade as "DMJM") agreed to pay a large sum of money to Republican fundraiser Albert P. "Toots" Manzi to secure a multi-million-dollar contract to design a new campus for Holyoke Community College in Holyoke, Massachusetts. So far, the construction contracts on the project have cost the Commonwealth over \$26 million, and the Commonwealth has paid DMJM approximately \$1.7 million in architectural fees.

Frank Masiello testified about the Holyoke Community College project for more than two days. Seventeen other witnesses, including William V. Masiello, later testified before the Commission about the project. Albert Manzi appeared before the Commission, but exercised his constitutional privileges against self-incrimination and refused to answer questions. The Commission requested that officials of DMJM appear and testify, but they refused. They could not be compelled to do so since they were outside the Commonwealth beyond the Commission's power to subpoena.

The following integrates the testimony of those witnesses, as well as other information obtained by the Commission, into a single account of the award of the design contract for the Holyoke Community College (HCC) project and of the subsequent design and construction of the project. Information has been selected for inclusion in this account to answer the main question, "How did Daniel, Mann, Johnson, Mendenhall obtain the contracts to design Phase I and Phase II of the HCC project?"

The following account is a detailed one. The Special Commission chose to investigate this project more deeply than any other except the MBM UMass/Boston construction management contract. It did so for several reasons. The HCC project was a major one, in taxpayers' dollars and in its importance to the people of western Massachusetts. The first contract was let in 1968, the earliest year within the Commission's mandata, and parts of the projet are still under construction today. Many witnesses and documents were available to give the Commission information on this project; the investigation did not have to rely on evidence from only one or two witnesses. There were striking parallels between the evidence of crime in the award of this contract and such evidence in the award of others--especially the MBM contract. The similarities in timing, people, and events between the DMJM and MBM contracts appear to be remarkably

close.

For those reasons, the Commission heard extensive evidence about the sale of the HCC design contract by Toots Manzi to DMJM. In doing so, the Commission also wanted to test the memories of the witnesses before it. The following account reflects the particularity of the Commission's investigation.

BACKGROUND OF THE HOLYOKE PROJECT

On the afternoon of January 4, 1968, the main building of Holyoke Community College burned down. The building had housed Holyoke High School from 1898 to 1964, then had been renovated at a cost of over \$800,000 to the Commonwealth and had become the new home of the community college.* The renovation project was completed only a few months before the fire. After the fire, the college continued to operate in its annex building and in borrowed rooms throughout the city.

The residents of Holyoke feared that the Massachusetts Board of Regional Community Colleges (BRCC) would decide not to rebuild Holyoke Community College, but instead close down HCC and expand Springfield Technical Community College to serve the Holyoke area as well.

A few days after the fire, Holyoke Mayor William Taupier, Holyoke Community College President George Frost, State Representative David Bartley, and others met with Theodore Chase, Chairman of the BRCC, and other state officials to discuss the future of the college. Although no decisions were made at the meeting, the desire of the residents of Holyoke to rebuild the college was expressed both at the meeting and through a letter-writing campaign to Governor Volpe and Chairman Chase.¹ At its next meeting on January 12, 1968, following a presentation by a delegation from Holyoke, the BRCC voted unanimously to allow HCC to remain in Holyoke.²

At the BRCC meeting on February 9, 1968, Holyoke Community College was again prominent on the agenda. First, Chairman Chase reported that Senate President Maurice Donahue (of Holyoke), House Ways & Means Committee Chairman Anthony Scibelli (of Springfield), and Representative David Bartley (of Holyoke) had assured him that money for construction of a new Holyoke Community College campus "would be forthcoming, over and above money needed for the other colleges." Second, the board voted preliminarily to choose the property offered by the City

* BCC project EJ 64-1 #3. Architect: Perry, Shaw, Hepburn. Contractor: Carpenter, Inc. Construction contract award price: \$791,087. Source: BCC project progress records.

of Holyoke as the site for the new campus for building purposes. Finally, the Board voted to request the Governor to file a special message with the Legislature asking for a capital outlay appropriation of \$1,100,000 for Holyoke Community College (specifically, for the development of a master plan for a college to serve 4,500 students, preparation of working plans and specifications for a first phase to accommodate 2,500 students, and preparation of the site).³

Chase wrote a letter to Governor Volpe on February 12, 1968, in which he thanked the Governor for his personal interest in the "tragedy" at Holyoke Community College. He conveyed the Board's request for \$1.1 million, and informed him that land would be donated by the City of Holyoke. It was not until nearly a month after Chase's letter to the Governor was actually sent that the BRCC voted on March 8, 1968 to accept the site from the City of Holyoke and to authorize the Chairman to request that the Governor send a special capital outlay request to the Legislature⁴

Governor Volpe submitted his special capital outlay request for Holyoke Community College to the Legislature on April 2, 1968.⁵ His request was identical to that of the BRCC: \$1,100,000 for preparation of a master plan, preparation of plans for site preparation and Phase I, and construction expenses for a site preparation contract, "provided that land is granted free to the Commonwealth by the City of Holyoke."

The special capital outlay bill was reported favorably out of the House Ways and Means Committee on April 24, 1968 with one major amendment -- that the \$1.1 million be used only for preparation of plans, and not for the preparation of the site. Under suspension of the rules of the House, the bill was read three times that day, passed to be engrossed, and sent up to the Senate for concurrence.⁶ On May 2, the bill was passed to be engrossed. The bill was enacted by both chambers on May 8, 1968, and Governor Volpe signed the bill into law on May 14, 1968.⁷ The bill contained an emergency preamble, so that it became law as soon as Governor Volpe signed it, only six weeks after he submitted his special capital outlay request.

The appropriation of \$1.1 million insured that Holyoke Community College would survive, and that it would have a new facility within a few years. In the meantime, the City of Holyoke began to plan a temporary building to house the college until 1972, when the new campus was expected to be ready for occupancy. In March 1968, George Mallis Associates of Springfield was hired to design a conventional school building which could be adapted for other uses in the future. A construction contract was later awarded to Fontaine Bros. Construction Co. of Springfield. The estimated \$600,000 to \$700,000 cost of the project was financed from the \$1.5 million in insurance proceeds from the fire which had

destroyed the main community college building. The interim building was completed in January 1969, and used by the college until 1974.⁸

THE DMJM/MASIELLO RELATIONSHIP

DMJM's Interest in Massachusetts

Daniel, Mann, Johnson, Mendenhall, a California-based firm and the eventual architects of Holyoke Community College, had for some time been actively pursuing a contract to design a community college in Massachusetts before it received the Holyoke contract. However, that contract was the first fruit of its efforts in the state.

According to Frank Masiello, DMJM had a very broad clipping service, and through the clipping service DMJM learned that several community college projects were being planned in Massachusetts.⁹ DMJM felt confident that an out-of-state firm could win such a contract because one of its major competitors in California, Ernest J. Kump Associates, had received a contract in 1966 to design a new campus for Greenfield Community College.

Representatives of DMJM, particularly Stanley Smith and Bruce Dunsmore, made a number of trips to Massachusetts to solicit work for DMJM. They approached officials of the BRCC, including President William Dwyer and Executive Director John Costello, to express interest in obtaining a design contract from the Commonwealth. They may also have visited officials of local community colleges. Costello and Dwyer were already familiar with DMJM; they had seen exhibits by DMJM at conventions of the American Association of Junior Colleges. DMJM displayed models and photographs of community colleges designed by the firm, distributed literature, and even took people on a tour of a DMJM-designed college if one were located nearby. Costello remembers meeting Smith at those conventions and Dwyer similarly remembers meeting Dunsmore.¹⁰

Daniel, Mann, Johnson, Mendenhall was one of 78 firms to apply for a contract to design a new campus for Mt. Wachusett Community College in Gardner, Massachusetts following public advertisement of the project by the Designer Selection Board in October 1967.¹¹ The BRCC itself favored DMJM for the project: it voted on March 8, 1968 to recommend that DMJM be named one of the three finalists for the Mt. Wachusett project.¹² DMJM was nominated as a finalist for the project (EJ 68-1R) by the Designer Selection Board, but the contract was awarded to Hugh Stubbins Associates of Cambridge, Massachusetts by the Commissioner of Administration and Finance (A&F), Anthony P. DeFalco, on March 25, 1968.¹³ Stubbins won out over The Architects Collaborative, another Cambridge firm, and DMJM.

On March 13, 1968, DMJM was chosen by the Designer Selection Board to be one of seven semi-finalists for another education project: BBC Project U68-4R, a study for the Life Sciences Building at the University of Massachusetts at Amherst. DMJM was not named a finalist for this project by the Designer Selection Board.¹⁴

DMJM was handicapped by being an out-of-state firm. Nearly all design contracts awarded by the A&F Commissioner since the creation of the Designer Selection Board had been awarded to Massachusetts firms. Ninety seven percent of finalists for the 87 projects awarded from the creation of the Board in late 1966 through the award of the Holyoke project in July 1968 were Massachusetts firms. During that period only four out-of-state firms were nominated as finalists for projects (DMJM twice), although many out-of-state firms submitted applications for projects.

It was clearly a disadvantage to be an out-of-state firm seeking a design contract from the Commonwealth of Massachusetts, even though the out-of-state firms were chosen for the contract by the Commissioner on three of the five occasions on which they were nominated.¹⁵

"An Architect Who Was Politically Connected"

In late April or early May 1968, Frank Masiello received a telephone call from Stanley Smith of DMJM. The two men had never met, so Smith identified himself as Vice-President of DMJM in charge of its educational facilities project development. He told Masiello that DMJM was interested in designing a community college for the Commonwealth of Massachusetts, but he did not mention a specific project. Smith suggested that DMJM and Masiello's firm might be able to form an association to pursue a contract, with DMJM providing expertise in the design of community colleges and Masiello & Healy providing expertise in "doing business with the Bureau of Building Construction." They agreed to meet later to discuss further the possibility of jointly pursuing a design contract.¹⁶

Why did Stanley Smith call Frank Masiello? Masiello believes that someone suggested that DMJM associate with a "Massachusetts architect who was politically connected," and thereby overcome the disadvantage of being an out-of-state firm.¹⁷ Smith was surely aware that Frank Masiello was "connected" since he knew that Masiello had been successful in obtaining state design contracts. He told Masiello that one of the reasons he was calling was that Masiello & Healy had "a lot of ... projects with the Commonwealth"¹⁸

The then Deputy Director of the Bureau of Building Construction, Walter J. Poitras, remembers an inquiry from Stanley Smith as to whether Masiello & Healy would be acceptable to the BBC as a consultant for construction supervision on a

project.¹⁹

Why did Smith choose Masiello & Healy over all the other architectural firms in the state? One reason must have been previous association between the two firms. They first became associated in 1964, when they jointly pursued a contract to design an electronics research laboratory in Cambridge for the National Aeronautics and Space Administration. They also jointly sought several other projects over the years, but were never successful in obtaining one.²⁰ At one point, DMJM used Masiello & Healy's Boston office as its Massachusetts address and had its name painted on the door.²¹

In the spring of 1968, soon after their phone conversation, Stanley Smith and Frank Masiello met at the Statler Hilton Hotel in Park Square, Boston. Masiello testified that they went downstairs to the cocktail lounge at Trader Vic's and had a couple of cocktails before dinner. Over dinner, they discussed strategy for obtaining a contract to design a community college. The meeting lasted between two and two-and-a-half hours.²²

Smith told Masiello that "he and his people ... had been to various parts of the state interviewing the people connected with the community college program including John Costello." He said they had also talked with "people in the legislative area," "members of the architectural selection committees" and officials of the BBC.²³ Despite these efforts, Smith said, DMJM had not been successful in obtaining a design contract from the Commonwealth.

Masiello's Strategy to Win a Contract

Frank Masiello explained the designer selection process to Smith, then suggested the following two-pronged strategy to obtain a contract: (1) set up an unofficial interview with the BBC at which DMJM and Masiello could present their qualifications to design a community college; and (2) meet with A&F Commissioner DeFalco for the same purpose.

This strategy was pursued as follows:

(1) Frank Masiello believed he could set up the interview with the BBC officials since he was friendly with them as a result of his many state contracts. The interview would have two purposes: (A) to increase DMJM's chances of being interviewed by the Designer Selection Board for a community college project; and (B) to try to win the vote of the BBC Director who was a member of the Board.

(A) Frank Masiello testified, "I was aware that the Designer Selection Board would have one or two of its members consult with high-level staff members of the Bureau of Building Construction ... to [screen] the applicants and [cut] the number of applicants to a few that would eventually be considered for interviews,

and then the Designer Selection Board would further cut the list of applicants to a few that they were interviewing, usually anywhere from four to six firms." Frederick J. Kussman, then Executive Secretary of the Designer Selection Board, was identified as one of the BBC officials involved in the preliminary screening of applicants for design contracts. By making Kussman, and other BBC officials involved in the screening process, aware of DMJM's qualifications, the firm's chances of being interviewed by the DSB would be increased.

(B) Masiello testified: "I told Mr. Smith that the Director of the Bureau of Building Construction, then Horace Chase, had a vote [on the Designer Selection Board], and in his absence ... Mr. Poltrast ... had the vote for the Bureau." Winning even one of the seven votes on the DSB could make the difference between being nominated or not being nominated as a finalist for a project, particularly since the Designer Selection Board used a weighted voting system which assigned greater importance to a first-place vote than to lower-priority votes. The vote of the BBC Director, combined with the connections DMJM had already established with the Board of Regional Community Colleges, would put DMJM in a very advantageous position.

(2) A&F Commissioner DeFalco would actually choose the designer for a project from a list of three names submitted to him by the Designer Selection Board. Masiello felt he could set up the meeting because DeFalco knew him to be an active supporter of Governor Volpe, as well as an architect with a lot of state contracts.²⁴ Masiello believed that "having Smith and other representatives of [DMJM] go up to the Commissioner's office with someone from our firm would stick in Mr. DeFalco's memory, the fact that we were a Massachusetts firm associated with an out-of-state firm." Smith said that Masiello's strategy seemed to be "a fine approach."

"Payment of Money in Consideration for Obtaining Contracts"

Masiello also told Smith that DMJM might be expected to make a "political contribution" in order to receive a design contract, even though his strategy of introducing DMJM to top officials of the BBC and to the Commissioner of A&F was intended to obviate the need for such a contribution. Masiello testified, "I explained to him [that] normally a political contribution was a contribution of money to a political party to elect a person who was seeking public office. But, in this particular case, I indicated to him that the word political contribution was more of a guise, and it was payment of money in consideration for obtaining contracts."

Masiello told Smith that Albert P. "Toots" Manzi, a powerful political figure in Worcester, a member of the Massachusetts Turnpike Authority, and a chief

fundraiser for the Volpe administration, might approach them for a contribution. He said, "I knew if Toots [got] wind of the fact that we were attempting to get a project without going through him, that in all probability if we didn't make a political contribution ... the possibility of getting a contract would be slim or virtually impossible." He explained Manzi's power to Smith: "I knew that if anyone was seeking any jobs or seeking some form of patronage, that Toots Manzi ... would ... get the job done...." Furthermore he said Manzi "pretty much came and went as he wanted at the State House."

Masiello told Smith that he was familiar with Manzi because he had previously given "contributions" to Manzi in order to receive state contracts. Masiello said that he called the payments "contributions" because "Mr. Manzi was always referring to payments of money as political contributions for the campaign, whether there was a campaign going on or not."

According to Masiello, Smith said that DMJM "didn't want to be involved in making contributions when at all possible [but] he stated that DMJM would consider the possibility if and when it arose." Masiello said, "it didn't appear that [Smith] was particularly alarmed [about] the fact that the possibility of a political contribution might be a consideration in acquiring a contract because he had told me that this had happened to their firm throughout the world on other projects."

When discussing Masiello & Healy's role in any project which DMJM might acquire in Massachusetts, Smith and Masiello decided that Masiello & Healy would "assist [DMJM] in the programming and master planning of the project.... Secondly, if there were more than one building in the complex ... we would do the construction drawings and some of the design on one of the buildings. Then, much later on, we would handle the majority of the contract administration" and "liaison" with state agencies.²⁵

A short time after the meeting with Smith at Trader Vic's, Masiello called Horace Chase to arrange an interview for DMJM with the BBC. It took place in April or May, 1968 at the BBC offices in the Saltonstall State Office Building.

Masiello attended the meeting along with Smith and Bruce Dunsmore. The BBC was represented by Horace Chase, Walter Poitrost, Fred Kussman, James Cusack, and possibly two or three others. Masiello testified: "DMJM made an extensive pitch as to their ability in the area of community college and university development." The firm made an oral and slide presentation "supported by brochures which they had prepared specifically for this occasion."

Masiello described the reaction of the BBC officials as "quite favorable."²⁶ He asked if DMJM could be considered for a project -- even though it was an out-of-state firm. "The general consensus [among the BBC

officials] was yes, because it was not unusual when jobs of this size were involved, and especially because DMJM was coupled with a Massachusetts firm."²⁷

Either the same day as the BBC interview, or the next day, Frank Masiello took Smith and Dunsmore to meet Commissioner DeFalco.

The four men met briefly in DeFalco's State House office. Masiello explained to DeFalco that DMJM was an out-of-state firm interested in designing a community college for the Commonwealth, and that Masiello & Healy, a Massachusetts firm, would play an important role in any project awarded to DMJM. He also told DeFalco that DMJM had made a presentation to the BBC of its qualifications for such a project.²⁸

DeFalco, when asked by the Commission, said he did not recall any such meeting with Smith, Dunsmore and Masiello. However, he testified: "While I was the Commissioner of Administration & Finance I operated as much as possible on an open-door policy. Those who wanted to see me for any reason saw me."²⁹

THE SELECTION PROCESS - OFFICIAL AND UNOFFICIAL

Commissioner DeFalco referred the Holyoke Community College project to the Designer Selection Board on May 21, 1968. The project was designated BBC project EJ 68-2 at that time, and the estimated construction cost for the entire project was set at \$9 million.³⁰

The DSB advertised the Holyoke project on May 23, 1968, but it already knew that many architects were interested in obtaining the contract. Architects had begun to write letters to the Board indicating their interest in the project as early as March, 1968. Daniel, Mann, Johnson, Mendenhall of Los Angeles, California, and Masiello & Healy of Worcester, Massachusetts were among the 74 firms which submitted applications for the project.³¹

DMJM's application was submitted by Bruce Dunsmore from its Washington, DC office. He stated that DMJM had recently established an office in Cambridge, Massachusetts at 201 Alewife Brook Parkway. However, research by the Commission found that a shoe store is now located at the address; in 1968, it was a branch bank. It does not appear that DMJM ever had an office at that address.

While the DSB solicited applications from designers, Holyoke Community College established its own architect selection committee. The Committee was chaired by Donald Dwight, then a Holyoke newspaper publisher; the secretary of the committee was Alberta Settle of East Longmeadow.

A Call From Toots Manzi

In late May or early June, 1968, Frank Masiello received a telephone call from Albert P. "Toots" Manzi at his office at 791 Main Street in Worcester. Manzi told Masiello that he knew he was pursuing the Holyoke Community College project with a firm from California. Manzi asked Masiello to come down to Manzi's Market on Shrewsbury Street in Worcester to discuss it. Masiello knew where the market was located because he had gone there numerous times to discuss political contributions with Manzi.

Masiello testified that he was "quite disappointed that [Manzi] found out that DMJM and [Masiello & Healy] were after the project, because I hoped that we could obtain a contract of this magnitude based purely on merit and qualifications, rather than a political contribution being a necessity."

Immediately after finishing his phone conversation with Manzi, Masiello called Stanley Smith at DMJM's offices in Los Angeles and told him the "disturbing news" of the call from Manzi. He told Smith that Manzi might ask them for a "political contribution." Smith again said that DMJM wanted to avoid making a contribution, but he did not rule it out entirely. He told Masiello to go ahead and find out what Manzi wanted, then to call Smith back and let him know what had happened at the meeting.

In the early afternoon, Masiello drove to Manzi's Market. He recalled the incident in detail in his testimony before the Commission. The trip took only about ten minutes. When he entered the store, Manzi was working behind the meat counter. He asked Masiello to wait for a few minutes while he served a customer. When he finished, Manzi suggested that they go for a ride because he felt like having an ice cream cone. They drove towards West Boylston in Masiello's car, along Route 12 through West Boylston, then a short distance to the left along another road. They drove to the Pinecroft Dairy, which was located in a large open area -- somewhat like a town square. Masiello pulled into the parking lot and parked under a large tree. The two men walked to the window and purchased chocolate ice cream cones. They ate them while leaning against Masiello's car, in the shade of the tree.

Until then their conversation had been general; then Manzi asked Masiello how interested he and DMJM were in obtaining the Holyoke Community College contract. Masiello replied that they were quite interested in the project.

"He Would Completely Wash His Hands of Me"

Manzi told Masiello that he was upset with him for going in to see Commissioner DeFalco and BBC Director Chase without consulting with Manzi first. He told Masiello that "He would completely wash his hands of [me] and anything he

had to do with [me]," if Masiello continued to try to go around him.

Masiello was surprised that Manzi knew about the meetings with DeFalco and the BBC officials, but he felt certain he knew how Manzi found out. Masiello testified that Manzi "had a lot of people that owed him their jobs in various departments in the State House, and there wasn't much that went on in the State House that Mr. Manzi wasn't immediately apprised of by his people."³²

Manzi told Masiello that he was keeping DMJM alive on the Holyoke project because of its association with Masiello's firm. He said that because of his efforts DMJM was one of a few firms being seriously considered for the Holyoke project. Manzi then said that if DMJM were successful in obtaining the contract because of his help, a political contribution to the administration of about \$70,000 to \$80,000 would be expected. A contribution of that magnitude would have taken approximately 10% of the architectural fees on the \$9 million Holyoke Community College project. (Architectural fees are calculated as a percentage of the estimated construction cost or, later, the actual construction cost of a project. The fees on a \$9 million project would have been approximately \$700,000 to \$800,000.)

Masiello "understood him to mean that the political contribution was a guise of a payment of money to obtain a contract for which a firm was under consideration." In fact, Masiello testified he began using the euphemism after first hearing it from Manzi.

Masiello said, "I was quite taken aback ... because I had no idea he was looking for ... that kind of political contribution." He told Manzi that he wasn't pleased to have to make a political contribution for the project, especially since he felt that DMJM was well qualified to design the project. He also felt that, "the amount of money that he was asking for the contract was just outrageous. There wasn't any way any architectural firm could hope to pay out that [much] money" and still make a profit on the job.

What Manzi Required

Manzi said that DMJM must agree to make a political contribution or it would not be awarded the contract -- even if DMJM were nominated as a finalist on the project by the Designer Selection Board. On the basis of his previous experiences with Manzi, Masiello was sure that Manzi could block the selection of DMJM if it did not contribute.

Masiello told Manzi that he did not have any authority to commit DMJM to a political contribution. He said that even if DMJM were willing to make a contribution, it would be a small one, certainly not as much as \$70,000. When asked how much he thought DMJM would be willing to contribute Masiello replied,

less than \$5,000. Manzi said that wouldn't be enough to obtain the contract because he was under a lot of pressure to raise money for political activities.

Manzi also said that contributions from DMJM would have to be made in cash. Frank Masiello asked if a contribution could be made by check payable to a political entity, but Manzi said he did not think checks would be acceptable.

Finally, Manzi asked Masiello, point-blank, if he thought DMJM would be willing to make a contribution to get the contract. Masiello promised to call DMJM and find out, then let Manzi know. Manzi said that time was running short, because a decision on the award of the contract would have to be made quickly. He warned that DMJM should not wait too long to make a decision.

The conversation then shifted to another topic. Manzi reminded Masiello that he still owed him money for another project. The two men soon drove back to Manzi's Market; after dropping Manzi off there, Masiello returned to his office. The entire meeting, from the time Masiello arrived at the market until he dropped Manzi off again, lasted about one hour.³³

Masiello called Stanley Smith in Los Angeles and told him about the conversation with Manzi. Masiello testified, "I told him that Manzi had told me that the only way that DMJM ... could be considered would be if a political contribution was part of the consideration; and if a political contribution was offered, [then] in all probability a contract would be forthcoming." Smith was quite taken aback by Manzi's demand for \$70,000 to \$80,000. He told Masiello that he did not want to discuss the possible deal over the telephone, and he asked Masiello to fly out to discuss it with him.³⁴

Masiello's Trip to California

Within a day or two, Frank Masiello and his wife flew out to California. They stayed at the Ambassador Hotel, at 3400 Wilshire Boulevard in Los Angeles, not far from DMJM's offices which were then at 3325 Wilshire Boulevard.

Masiello recalls his the trip to California as in the early part of June, 1968 because he remembers people in Los Angeles remarking, "how congested and confused the area was right after [the] assassination of Robert Kennedy [on June 5, 1968] for a day or two, onlookers going to see the site of the assassination."

The day after he arrived in California, Masiello went to see Smith. DMJM's offices occupied several floors of the building, including one devoted to military projects and one devoted to educational facilities projects. Masiello waited in the lobby, looking at a world map with all of DMJM's offices identified on it, until Smith came to get him.

Smith and Masiello met alone briefly, then they went to meet DMJM's chief fiscal officer and Smith's superior, Tevfik "Tef" Kutay. Frank Masiello had met

Kutay in 1964 when DMJM, and Masiello & Healy had pursued the NASA project in Cambridge.

Masiello began by telling Kutay, "[I was] embarrassed ... that I had been caught like a little kid with his hands in the cookie jar when Manzi ... found out that I had attempted to ... get assigned a contract ... without his being involved or having knowledge of it." Then he described, in detail, what had occurred at his meeting with Manzi. He told Smith and Kutay that Manzi had taken credit for keeping DMJM in consideration for the Holyoke Community College project because of its association with Masiello & Healy, and that Manzi said he would stop pushing DMJM unless they agreed to make a political contribution of \$70,000 to \$80,000 in cash. He told them he believed Manzi had the power to keep DMJM from winning the contract.

Masiello said, "When I mentioned the figure of \$70,000 to \$80,000 to Kutay, I almost sensed he was about to go into shock.... I don't believe he had ever heard of that kind of a number associated with political contributions." Smith and Kutay believed DMJM was as well, or better, qualified as any other firm that might be considered, and had "a lot of friends in Massachusetts" as well. They felt their connections with President Frost of Holyoke Community College, John Costello of the BRCC, members of the Holyoke Community College architect selection committee, and other state and local officials ought to be sufficient to ensure DMJM's selection, despite Manzi. Kutay said, "Our firm just isn't interested in getting involved in political contributions."

Masiello reiterated that DMJM could not win the contract without securing the assistance of Manzi through a substantial campaign contribution. Then Smith or Kutay suggested that Masiello might reopen negotiations with Manzi and move him off his position of asking for \$70,000 to \$80,000. They first said they would like to contribute less than \$5,000. They then discussed, at some length, what DMJM would do if Manzi would not accept \$5,000, and decided that DMJM might be willing to contribute as much as \$22,000. But they did not decide to agree to make a contribution.

Smith and Kutay also said they would feel more comfortable about making "legal" campaign contributions through personal checks from various officers of the firm payable to political committees, rather than making cash contributions. Masiello said he thought it might be possible to give checks, but he knew, from his own past experience, that Manzi preferred cash.

Masiello's Guidelines: No Money Up Front

Masiello also suggested two guidelines for any deal: (1) that payments on the commitment not begin until DMJM began receiving its fees on the project; and

(2) that the amounts paid to Manzi be pro-rated to the amounts received by DMJM. He told them that he suggested the guidelines because he had, in the past, made political contributions for contracts "up front," and, when the contract never really got moving, there wasn't anyone who was going to give his money back.

At one point, Kutay said he had to make a private telephone call. Smith and Masiello left Kutay's office, and Smith took him to meet Harry Clausen. Clausen was introduced as the person who would be the project manager if DMJM were selected for the Holyoke Community College project. Smith left Masiello and Clausen alone. Masiello said, "I presume [he] went back and had a further discussion with Tef Kutay." He was gone for 20-30 minutes before he came and brought Masiello back to Kutay's office.

After their private conversation, Smith and Kutay told Masiello that they still felt that, if at all possible, DMJM should avoid making a political contribution to get the contract. But they asked Masiello to talk to Manzi when he got back to Worcester and see how serious he was about wanting such a large amount. After Masiello talked to Manzi, he would report back to DMJM and a final decision would be made on the campaign contribution.³⁵

After Frank Masiello's meeting with Smith and Kutay, he and his wife returned to Worcester. He called Toots Manzi and told him that he had gone to California to talk to the officials of DMJM. He asked to come down and discuss the Holyoke project with him again. Manzi agreed, and asked Masiello to come down to his market. Within a few minutes, Masiello did so. In his testimony he recounted the meeting in detail.

When he arrived at the market, Manzi was preparing meat for display. He was wearing a blue sweater and a white apron, his customary attire around the store. Manzi took Masiello into the back room. "It was a large storage room that was piled with boxes of different types of foodstuff[s] and wine and beer.... They had a lot of cartons stacked two or three high, and it seems to me we just leaned against one of those low stacks."

Masiello's Negotiations with Manzi

Masiello told Manzi that he had no firm decision from DMJM about a political contribution to obtain the Holyoke contract. Manzi responded that not much time was left before the DSB would notify the architects who had been selected to be interviewed for the project. Manzi said that DMJM must decide quickly whether it wanted to be considered for the contract. He reminded Masiello that other firms were in the running, and that DMJM would not be selected unless it contributed.

Masiello then told Manzi that the main problem was the amount of money he was asking for the contract: \$70,000 was "way out of the question," but a \$5,000

contribution might be possible. Manzi reiterated that he was under "a lot of pressure to secure a lot of money for the upcoming political activities of the administration," so he wouldn't be able to get "his people" to go along with such a nominal amount. He suggested a contribution of 5% of the architectural fees on the project (or about \$35,000 to \$40,000), but Masiello said that was still out of the question.

They continued to negotiate. Masiello said, "I kept coming up from the five and going towards the twenty and he kept coming down from the seventy to ... the \$30,000, \$40,000 range." Finally, Masiello said that if DMJM decided to make a contribution at all, he doubted that they would consider anything more than \$20,000 to \$22,000. Manzi said he didn't think that was enough for the project, and that he didn't believe he could convince "his people" that the contract award should be made for that sum of money. If they did accept the \$20,000 to \$22,000 offer, he would expect the contribution to be increased proportionately in the event that the fees on the project increased later on. Furthermore, he stated, payments must be made in cash. The meeting ended without any final decision.³⁶

Masiello returned to his office at 791 Main Street and placed a telephone call to Smith. He told Smith that Manzi had moved from his position of wanting \$70,000 to \$80,000, and that he might accept \$20,000 to \$22,000 for the contract -- but in cash rather than by check. Masiello emphasized the need for a speedy decision, since the DSB would soon choose the firms to be interviewed for the project. Smith told him that he was still not sure that DMJM wanted to get involved in making a contribution, but said he would check on it and get back to him.

Later that same day or the next day, Smith called Masiello to tell him that DMJM had decided to make a contribution -- for the lowest amount that Masiello could negotiate with Manzi.

The Mechanics of Making the Contribution

Smith and Masiello discussed the mechanics of a deal with Manzi. They agreed to follow Masiello's two original guidelines: to begin making payments to Manzi only after DMJM began to receive fees from the Commonwealth, and to make each payment to Manzi in proportion to the amount received from the Commonwealth.

Smith suggested that the contributions be made through Masiello & Healy in the guise of architectural fees. Masiello would invoice DMJM for fees from time to time, then generate cash to make payments to Manzi. When Masiello said that he did not want to be involved in the payments, Smith offered to give Masiello & Healy additional money to take care of the extra corporate income tax liability caused by the fake fees from DMJM. Masiello still said no. He gave two reasons

for his decision: (1) he wanted to avoid problems with the Internal Revenue Service and (2) he "didn't want to be in the middle if anything didn't work out between Manzi and DMJM."

Even though Smith agreed not to funnel payments through Masiello & Healy, that firm was going to be held responsible for a portion of the commitment to Manzi. DMJM would generate the necessary cash, but Masiello & Healy's pro rata share of the payments would be deducted from its fee from DMJM on the project. If Masiello & Healy received 10% of DMJM's total fee, then an amount equal to 10% of the total payments to Manzi would be deducted from Masiello & Healy's fee.

Finally, Masiello suggested that Manzi and Smith meet to get to know each other and finalize the arrangement. Masiello told Smith that he wanted to make sure a direct line of communication was established between Smith and Manzi. Masiello was about to move to Florida and did not want to be relied upon as a go-between. Smith agreed to meet with Manzi.³⁷

Shortly after his discussion with Smith, Masiello called Manzi, then went to Manzi's market. It was the middle of the afternoon and the market was not busy. Manzi was cutting meat at the end of the meat counter when Masiello came in; he continued to work during their conversation.

Masiello Comes to Terms With Manzi

Manzi asked Masiello if he had heard from DMJM, and Masiello replied that he had. Masiello told him that DMJM had decided to make a political contribution, but that they still had to decide the amount of the contribution. After some negotiation, Manzi agreed to accept \$22,000 for the contract.

Masiello told Manzi that, if the architectural fees on the project turned out to be less than expected, the campaign contribution should be reduced proportionately. Manzi retorted that he felt it would only be fair to increase the campaign contribution if the architectural fees turned out to be greater than expected. Masiello told Manzi he would have to discuss that with the DMJM people.

Masiello then told Manzi that DMJM would start to make payments on the commitment only after it started receiving fees from the Commonwealth on the project, and, furthermore, that the payments would be in proportion to the amount received by DMJM. Manzi didn't like those conditions, and he said he would have to discuss them with "some people."

Manzi then informed Masiello that DMJM was going to be interviewed for the Holyoke Community College project by the Designer Selection Board. He said they would shortly receive a notice to that effect from the DSB.

Masiello asked Manzi if he would be willing to meet with Stanley Smith. He argued that it would be in his best interest to meet some representative of DMJM

in case Masiello moved to Florida and was no longer available to mediate conflicts between Manzi and DMJM. Manzi was reluctant to meet with Smith at first. Masiello testified, "I guess Manzi initially wanted to be isolated from any direct contact with the DMJM people." After further discussion, Manzi agreed to meet with Smith. Masiello told Manzi he would let him know when Smith would next be in Masssachusetts.³⁸

Masiello called Smith to inform him of the success of his meeting with Manzi. He told him that DMJM was going to be interviewed by the DSB, and that Manzi had agreed to the \$22,000 figure for the award of the contract. Smith thought that was fine. Masiello also told Smith that Manzi had agreed, albeit after some convincing by Masiello, to meet with Smith when he came to Massachusetts.³⁹

At its 46th meeting (on June 12, 1968) the DSB chose four firms to be interviewed for the Holyoke Community College project on June 26, 1968: Daniel, Mann, Johnson, Mendenhall; Gruzen and Partners of New York; Alderman and MacNeish of West Springfield, Massachusetts; and Deeter, Ritchey, and Sippel of Pittsburgh, Pennsylvania. The selection of the firms to be interviewed was the only item of new business conducted that day. The minutes of the meeting describe the selection process:

Mr. George Frost, President of Holyoke Community College, and his assistant, Mr. William McManus, accompanied Mr. William Dwyer voting representative of the Regional Community College Board to the DSB meeting. Utilizing agreed-upon criteria, applications from seventy-one (71) firms were considered. Tentative finalists were scheduled for interviewing with a specific interest to be directed to how said firms intended to staff their Boston office and furnish the Commonwealth with the time of the principals experience with projects of this nature.⁴⁰

Some time after June 12, 1968, the DSB notified the four firms selected to be interviewed. From the information currently available, it appears that, unless Manzi had advance notice of the firms which the DSB was going to choose for interviews, the meeting between Manzi and Masiello took place shortly after June 12, 1968.⁴¹

THE ACQUISITION OF THE CONTRACT

Stanley Smith came to Boston a day or two before the scheduled interview with the DSB. He had two purposes for arriving early: to rehearse DMJM's presentation to the DSB, and to meet with Toots Manzi and finalize the \$22,000 deal for the contract to design a new campus for Holyoke Community College.

Stanley Smith and William Heinkel were to represent DMJM before the DSB on June 26, 1968. The two men, along with Frank Masiello, rehearsed their presentation several times beforehand. The first run-through took over an hour, but they were able to modify the presentation to make it fit into the allotted half-hour.

SMITH MEETS MANZI AND MAKES THE DEAL

Masiello introduced Smith to Manzi at a meeting in Boston in the early evening, "just after normal business hours." Just the three of them were present. Masiello remembers the meeting vividly because Smith mispronounced Manzi's nickname, as if it rhymed with "Boots." Masiello got the meeting started by describing the role that both DMJM and Manzi would play on the Holyoke project. He said that DMJM had agreed to pay Manzi not more than \$22,000 in cash over a period of time--with the payments beginning when DMJM received its first fees on the project from the Commonwealth, and continuing thereafter in proportion to the fees received by DMJM.

On his part, Manzi would see to it that DMJM was selected as the designer for the project as long as DMJM made the list of three firms nominated by the DSB; but Manzi made it clear that it was DMJM's responsibility to make a good presentation to the Board. He said he could not ensure DMJM's selection as a

finalist by the DSB. In addition, Manzi would see to it that any necessary funding for construction or further design work at Holyoke Community College would be included in the Governor's proposed capital outlay budget. However, Manzi said he could not control what happened to the capital outlay budget in the legislature.

Smith said that DMJM would reduce the amount it was to pay Manzi if the fees paid to DMJM on the project were less than anticipated. Manzi said that, if the project expanded and DMJM received more fees, then it would only be fair for it to pay additional money as campaign contributions. Smith was noncommittal, according to Masiello. Manzi's suggestions "didn't seem to sit too well, but he didn't say yes and he didn't say no. The possibility was left open."

Manzi was not happy that the payments were not going to begin until DMJM began receiving fees on the project, or that the payments were going to be spread out over time. Smith flatly stated that DMJM would not pay any money up front -- no matter how small the amount.

Smith asked if it would be possible to make the payments to Manzi by check, to make them legal contributions. Manzi said that it was impossible because they needed cash for upcoming campaign activities.

MANZI RECOMMENDS MBM

Manzi asked Smith which firms DMJM was planning to hire as consultants if they received the contract. Smith mentioned Masiello & Healy as its local architectural consultant. He mentioned other firms as possible consultants for cost control, landscape architecture, etc. Manzi asked Smith if he was familiar with a cost estimating firm called McKee-Berger-Mansueto (MBM). Smith said that DMJM had worked with MBM on many projects. In fact, DMJM was one of MBM's larger clients. He told Manzi that DMJM was considering using MBM on the Holyoke project even before Manzi suggested the firm.

Why did Manzi suggest MBM to DMJM as a consultant for the Holyoke project? According to Masiello's testimony, Manzi knew MBM Vice President Anthony E. Mansueto. Manzi had first been introduced to Mansueto by Masiello on the seventh day of the 1967 World Series between the Boston Red Sox and the St. Louis Cardinals. At the end of their conversation, Mansueto had given Manzi one of his business cards and asked him if it would be all right for him to come to Manzi's office to discuss possible work for MBM with the Massachusetts Turnpike Authority. Manzi said he would be happy to talk to him.

Some time after the initial meeting between Mansueto and Manzi, but prior to the meeting between Manzi and Smith, Manzi called Frank Masiello to ask his opinion of Mansueto. Masiello said he thought Mansueto was an "OK guy." Manzi asked if Mansueto would be willing to make a contribution, and if he would live up to a commitment if one were made. Masiello replied that he thought he would. He recalled that he and Mansueto had each purchased two tickets to a \$500 per plate dinner early in the Peabody administration, so he "wasn't unfamiliar with making political contributions."⁴⁴

THE DSB INTERVIEW

Stanley Smith and William Heinkel of DMJM made the first presentation to the DSB in Room 2108 of the Saltonstall State Office Building on June 26, 1968. DMJM was scheduled to appear first among the four firms before the Board -- from 1:15 to 1:45 PM. Present were the five appointed Board members: Chairman Earle Littleton, Robert Meserve, Stanley Porter, William Pulsifer and Leo Whelan, as well as BBC Director Horace Chase and BRCC President William Dwyer. At least Chase and Dwyer were already familiar with DMJM, thanks to the firm's legwork in Massachusetts. Fred Kussman, the Executive Secretary of the DSB, took the minutes.⁴⁵

Frank Masiello was at the DSB meeting as an observer. He described the interview: Smith identified the participants of the design team and described each one's role in the project. Smith told the Board that Masiello & Healy would take part in programming and planning and in preparation of construction documents, and would do the majority of the construction supervision. He told them that DMJM planned to hire MEM as its cost consultant on the project. He then gave the Board a timetable for the project--from programming and master planning through construction supervision. Finally, he made a slide presentation showing other DMJM projects. Approximately five to ten of the allotted thirty minutes were still remaining when Smith finished his presentation, and the DSB members asked Smith a variety of questions about how DMJM would handle the project. The role of local firms and the availability of DMJM personnel on the project were major questions.⁴⁶

Following interviews with the three other firms, the DSB voted to nominate three finalists for the Holyoke Community College project: Alderman and MacNeish; Daniel, Mann, Johnson, Mendenhall; and Deeter, Ritchey and Sippel.⁴⁷ The DSB notified Commissioner DeFalco of its choices in a letter signed by Chairman Earle F. Littleton and dated June 28, 1968.⁴⁸

Shortly after 5:00 p.m. on the day of the interview, Frank Masiello called the BBC and spoke to either George Rushton or Fred Kussman. Rushton was an assistant to Director Chase. Masiello found out that DMJM had been nominated as a finalist for the Holyoke project by the DSB.⁴⁹

THE COMMISSIONER'S SELECTION

On July 9, 1968, Commissioner DeFalco notified BBC Director Horace Chase that he had selected Daniel, Mann, Johnson, Mendenhall to design the Holyoke Community College project. He made his choice of DMJM official by writing "CK APD" next to the name of the firm on the letter he received from Earle Littleton listing the three finalists for the project.⁵⁰

DeFalco testified before the Commission about his procedures for awarding design contracts, including the Holyoke project in particular. The following excerpts have been selected from the transcript to represent and summarize his testimony on Holyoke:

Q. How did you go about selecting the design firms to whom contracts were awarded during your term as Commissioner?

A. I would randomly select a firm from the listing of three that were presented to me.

Q. And what do you mean by saying you would randomly select a firm?

A. Without having any system of keeping track of my selections, I would not pick the same position [on the list] each time.⁵¹

Q. Except that you may not remember the firm concerning which you were contacted, I am asking you whether at any time during the time you were Commissioner, if someone from the Governor's office contacted you with respect to the award of any design contract?

A. It is certainly possible, but I don't recall any.⁵²

Q. Sir, did Albert "Toots" Manzi ever communicate with you concerning the award of a design contract to any design firm?

A. Not that I can recall. I had little or no contact with Toots Manzi while I was Administration Commissioner.⁴³

Q. You indicated in an earlier response that on occasion you might see a name on the list sent to you by the DSB with which you were familiar?

A. Yes.

Q. And if that happened, that might affect your selection in that particular case?

A. Yes.⁵⁴

Q. Is it your answer, sir, that you selected [Daniel, Mann, Johnson, Mendenhall] through a random selection process?

A. Yes, it is.

Q. Sir, did anyone communicate with you concerning the award of this particular contract?

A. My best recollection is no.⁵⁵

Former Commissioner DeFalco's testimony raises several questions: (1) DeFalco admitted that previous knowledge of a design firm nominated by the Designer Selection Board might influence his selection of a designer for a project. As was mentioned above, DeFalco testified, in 1980, that he did not recall a meeting between himself, Stanley Smith, Frank Masiello, and Bruce Dunsmore in 1968. Yet Frank Masiello recalls DeFalco mentioning the meeting to him during a plane trip some years later.⁵⁶ Did the meeting with the DMJM representatives plant the firm's name in DeFalco's memory long enough to influence his selection of the firm for the project? (2) Did Toots Manzi influence DeFalco's selection of DMJM, and, if so, how did he do it? The Commission has no evidence of any direct or indirect communication between DeFalco and Manzi regarding the Holyoke Community College project, although the rest of the evidence surrounding the award of the contract certainly suggests that such a communication occurred.

Horace Chase of the BBC and Arthur Mann of DMJM executed a contract for the design of the Holyoke Community College project, dated July 9, 1968--the same day that Commissioner DeFalco awarded the contract to DMJM.⁵⁷ It is not usual--indeed it is highly unusual--for a contract to be executed on the same day it is awarded. After the BBC is informed by the A&F Commissioner of his choice of a firm to design a project, it must notify the designer (usually by mail) of the award of the contract, and arrange for execution of the contract. That process takes more than one day to complete. Anthony DeFalco could not explain why DMJM's contract was executed on July 9, 1968. He said "Anything done in one day by the Commonwealth would surprise me."⁵⁸

Frank Masiello testified that he received a telephone call from Toots Manzi informing him that DMJM was about to be selected for the Holyoke Community College project. The phone call from Manzi was the first notification received by Masiello that DMJM was going to win the contract. Masiello then called Stanley Smith and told him the good news. Smith was elated.⁵⁹

According to Masiello, Stanley Smith and Harry Clausen came to Boston on July 9, 1968. They must have received advance notification of the award of the contract to DMJM in order to travel to Boston and still be able to pick up the contract on the very day it was awarded. That theory is supported by the fact that the BBC's official letter of notification to DMJM is undated, perhaps to conceal the fact that DMJM had already executed its contract with the Commonwealth of Massachusetts prior to official notification that it had been awarded the project.

That evening, Smith and Clausen bought cocktails and dinner at Locke-Ober's for Frank Masiello and several BBC plan examiners to celebrate the award of the contract. The BBC personnel were James Cusack, Walter Flaherty, and Joseph

Glynn.⁶¹

Frank Masiello does not recall Arthur Mann being present in Boston on July 9 to execute the contract. It is likely that Horace Chase executed the Contract on behalf of the BBC on that date; and that Smith took the contract back to Los Angeles, where Arthur Mann later executed it on behalf of DMJM.

Also on July 9, 1968 (according to a document found in the files of MBM), Frank Masiello spoke on the telephone to MBM Vice President Seymour Berger, who passed the message along to Anthony Mansueto. Masiello informed Berger that DMJM had approved MBM as its cost consultant on "their \$9 million Massachusetts project if they get it."⁶³

About two weeks later, Masiello spoke by telephone with Mansueto. Mansueto described their conversation in an internal memorandum to MBM employee Ivan Soskel, which read in part: "DMJM has been requested through our Massachusetts political friends to use MBM on their new Holyoake [sic] College project."⁶⁴

Masiello testified that when he spoke to Mansueto he was referring to the meeting between Stanley Smith and Toots Manzi at which DMJM was asked to hire MBM on the Holyoke project.⁶⁵ In his memo to Soskel, Mansueto continued: "I get the general impression from Frank Masiello that we are being pushed by the state people and that some of the work that we have got is not as coincidental as it might seem -- people are being asked to use MBM." Masiello said he made that remark sarcastically after Mansueto boasted about how well MBM was doing in Massachusetts. He told Mansueto not only that Manzi had pushed for MBM on the Holyoke project, but also that BBC officials were recommending MBM to architects as a cost control consultant.⁶⁷

However, DMJM did not submit MBM's name to the BBC for approval until June, 1969, and did not submit Masiello's name until February, 1970. In a Commission interview, Masiello said that he thought DMJM felt it did not need him anymore once it won the contract, and that DMJM was constantly trying to reduce his firm's role in the project.⁶⁸

THE PROJECT BEGINS

DMJM began to prepare the master plan for the new Holyoke Community College campus shortly after it received the contract, and worked on the plan for nearly a year. The completed master plan was submitted to the BBC on June 13, 1969 and approved by the Bureau on August 7, 1969. Besides the development of the master plan, many other significant events occurred during that first year of the project.

Frank Masiello moved to Florida in late August or early September, 1968, although he leased an apartment in Worcester and continued to spend a considerable amount of time in Massachusetts for the next four years. Frank's brother, William V. Masiello, began to take a more active role in the management of the firm. At about the same, Edward Healy left the firm to go into business with his father. The name of the firm was then changed from Masiello & Healy to Masiello & Associates.

In 1969, Frank Masiello sold his firm to Kassuba Development Corp. of Florida. He continued as President of the firm under Kassuba while Masiello & Associates served as an in-house architect for its parent company. Frank Masiello would purchase Masiello & Associates back from Kassuba in early 1972, then sell it to his brother William in late 1972.

Manzi's Weekly Calls to Masiello

According to Frank Masiello, one of the major factors in his decision to leave Massachusetts was pressure from Toots Manzi to raise funds and to keep his "political contribution" commitments to Manzi. Masiello testified that, from 1965 on, Manzi called him at home every Sunday morning between 10:30 and 11:30. Manzi usually called again on Monday evening or Tuesday if Masiello didn't report back to him on the results of his fundraising efforts. Masiello described Manzi's manner during those frequent calls: "I remember him as always being calm and businesslike, but extremely persistent ... and when he thought you might not be putting your best efforts forward, he would increase the pressure even more." The calls put a great strain on Masiello, and led to personal and marital problems. One of the purposes of his move to Florida was to escape Manzi's phone calls, but it did not work. Manzi found out the unlisted telephone number of Masiello's apartment in Worcester and called him there when he was in town. Manzi also called William Masiello when Frank was out of town, and asked him to relay messages to Frank.⁷⁰

Within five or six weeks after DMJM received the Holyoke contract, but before Masiello moved to Florida, Manzi began to mention DMJM in his weekly phone calls. He told Masiello that he was under a lot of pressure from the Governor's office to raise funds, and asked if it might be possible for DMJM to start making payments on its commitment -- even though DMJM had not yet received any fees from the Commonwealth. He was not pleased when Masiello reminded him that the agreement had been for DMJM to begin making payments only after it began receiving fees. Masiello said, "I don't think he ever heard that part of the conversation when we were negotiating the contributions with him and Smith."⁷¹

As often as he could after Manzi called, Masiello would call Stanley Smith in Los Angeles and tell him about the pressure Manzi was putting on him. Smith refused to consider making any payments until DMJM received some fees from the Commonwealth, insisting that Manzi knew what the arrangement was at the outset.

On a few occasions, when the pressure from Manzi was particularly heavy, Masiello asked Smith to call Manzi directly and explain DMJM's position. Masiello believes that Smith did call Manzi because the pressure from Manzi eased for a while at the time the calls would ordinarily have been made.⁷²

In November, 1968, both Frank Masiello and Anthony Mansueto attended a convention of the Society of American Registered Architects in Los Angeles. It was held at the Ambassador Hotel, just across the street from DMJM's offices. Mansueto spoke at the convention on how to detect fraud and corruption in public contracts through cost control, and Stanley Smith spoke on how to acquire government contracts.

While he was in Los Angeles, Masiello spoke to Stanley Smith and Tefvik Kutay about Masiello & Associates' role in the Holyoke project. He was unhappy that he didn't have a contract with DMJM defining that role, and felt he was getting the "runaround" from DMJM. Smith and Kutay assured him that he would receive a draft contract within a few days. But Masiello already knew he would be unhappy with the terms of the contract. It became clear at the meeting that Stanley Smith had a much more limited conception of Masiello & Associates' role in the project than Frank Masiello did. Smith said that Masiello & Associates would have major responsibility for supervision of the construction contract, but would not be involved in programming and master planning, or in preparation of the plans and specifications. No agreement was actually signed until May, 1969.

Masiello also told Smith and Kutay that "Manzi's constant telephone barrages, week after week, were a problem." They reiterated that DMJM would not begin making payments to Manzi until it received its first fees on the project. However, they did say that they expected to begin receiving fees shortly, and could then make a payment on the \$22,000 commitment.⁷³

Anthony Mansueto also met with DMJM officials during the convention (according to entries in his diary), presumably to define MBM's role in the Holyoke Community College project. He met with Harry Clausen on October 31, 1968, and perhaps November 13, 1968, and with Bruce Dunsmore on November 14, 1968.

After the convention ended, Masiello informed Manzi that DMJM was still not willing to make a payment to him. So the phone calls from Manzi to Frank and William Masiello continued. Frank Masiello testified, "If he couldn't reach me, he would then bother my brother, Billy, and then Bill would get on the phone and locate me wherever I happened to be ... and lay on me the good words that Manzi

laid on him." When Frank was in Worcester, Manzi would call him at the apartment he maintained there. Manzi also called him at the Saltonstall State Office Building in Boston while he was attending a meeting of the Massachusetts Board of Registration in Architecture there. The pressure from Manzi bothered him so much that he sometimes stayed in a hotel in Boston rather than go to his apartment in Worcester where he would receive a phone call from Manzi.

One new theme developed in Manzi's telephone calls after the convention: he sometimes told Masiello that he was going to hold him responsible for every dollar of the commitment, which both DMJM and MBM had made to him, because Masiello had brought both DMJM and MBM into the state and was instrumental in bringing them together with Manzi. Masiello declared that he refused to be held responsible for someone else's actions.⁷⁴ (The discussion of political contributions by MBM to Manzi in connection with its contract for construction management at the Boston campus of the University of Massachusetts is presented elsewhere in this report in the chapters on MBM.)

DMJM'S FIRST PAYMENT TO MANZI

Manzi Monitors for Payments to DMJM

In April, 1969, Manzi called Frank Masiello and said that DMJM had just received a check from the Commonwealth. He was quite upset that DMJM had not made arrangements to make a payment to him. Masiello said: "He made it very clear to me that there were a lot of things he could do to prohibit the contract or the payments from moving forward in a normal, orderly process" if DMJM did not satisfy him. Manzi also stated he would not make any efforts to place funds for Holyoke Community College into the capital outlay budget if DMJM did not contribute. Masiello told Manzi that he would call Smith and find out what was happening, then call him back.⁷⁵

DMJM submitted its first invoice to the Commonwealth for its work on the Holyoke project on April 10, 1969. The invoice was in the amount of \$8,976.15.⁷⁶ Since it normally takes the Commonwealth two or three weeks to process an invoice, DMJM probably received its first payment on the project around the end of April, 1969.

How did Albert Manzi find out about the payment to DMJM? Information on payments on public contracts is available to the public through the office of the State Comptroller. M. Joseph Stacey, who served as comptroller from 1966 through February, 1973, testified that Manzi himself requested information ten times on payments to MBM pursuant to its contract to manage the construction of the new UMass/Boston campus. Stacey does not recall Manzi requesting such information on

other projects,⁷⁷ but Manzi could have requested information on the Holyoke project from employees of the comptroller or from the BBC.

Manzi's call to Masiello was not without precedent. Masiello testified that Manzi would sometimes, "call me up and tell me he knew I had a payment in the BBC and that we were due to be paid." In some cases, Manzi even carried checks for Masiello & Associates from the comptroller's office in Boston to Worcester. When Frank or William Masiello came to pick up the check from him, Manzi took advantage of the opportunity to remind them of their commitments to him.⁷⁸

As a result of his conversation with Manzi, Frank Masiello called Stanley Smith to ask him if it was true that DMJM had received a payment on the Holyoke project and not made a payment to Manzi. Smith replied that DMJM had invoiced the Commonwealth for a small amount, but had not yet even received the check. He was surprised that Manzi had found out about the payment so soon.

Masiello suggested to Smith that DMJM make a payment to Manzi to prevent him from causing the job to be delayed or payments to be held up. Masiello was also concerned about the continuing pressure from Manzi, so he told Smith, "I think you are just going to have to make up your mind that this man just isn't going to get off my back or your back. He is going to be insisting until he starts seeing some payments on the commitment." Smith was unconvinced and remained noncommittal about making a payment to Manzi.

Masiello later called Smith again, but Smith was not there so he spoke to Tefvik Kutay instead. He told Kutay what Manzi had said about causing delays in the project or in payments to DMJM and not pushing for further funding for the project if DMJM would not contribute. Kutay said that Smith had told him about Masiello's previous phone call, so he was aware of the pressure Masiello was under. He promised that DMJM would make its first payment to Manzi in the very near future.⁷⁹

DMJM's \$5,000 Check

Masiello expected DMJM to make a cash payment directly to Manzi. Instead, in late April, 1969, Masiello received an "unpleasant surprise" in the mailbox of his Florida apartment: a corporate check from DMJM in the amount of \$5,000, payable to him. The DMJM letterhead envelope contained no letter of explanation, only the check wrapped in a piece of paper.

Masiello, however, needed no letter of explanation. He testified, "I knew exactly what they were attempting to do. They were attempting to make me, or our firm, a conduit." He called Kutay to tell him that Masiello was not going to be a conduit for payments to Manzi. He insisted that payments be made in cash to Manzi by representatives of DMJM. Kutay replied, "There isn't any way we can get

that amount of cash, and you have been so persistent in trying to get a payment out of us for Manzi, and he's been harassing you, please do it just this once. I just don't see any way of getting the money to Massachusetts to relieve the pressure that you're under." Masiello relented and agreed to make the payment to Manzi that time -- but never again.⁸⁰

How the Check was Cashied

Frank Masiello arranged to have his brother, William, cash the check and deliver the proceeds to Manzi.⁸¹ William Masiello testified that "Frank called me into his office and asked me to cash a check from DMJM."⁸² Thus, it appears that the \$5,000 check was handed from Frank to William Masiello during one of Frank's frequent trips to Massachusetts.

Both Frank and William Masiello remember Frank endorsing the check on the back, placing it inside a plain envelope, and writing "Toots" on the outside of the envelope.⁸⁴ Frank handed the envelope to William and asked him to cash the check and deliver the \$5,000 cash to Manzi. When William asked Frank where he should cash the check, Frank said he would call Sherwood "Woody" Tarlow, President of the Capitol Bank and Trust Company in Boston, and ask him to cash the check. He chose Tarlow's Bank for two reasons: (1) He knew Tarlow from Tarlow's days as a fundraiser for former Governor Endicott Peabody. Masiello believed that Tarlow would understand when he said he needed to cash the check to make a political contribution, and he wouldn't have to explain his actions further. (2) Tarlow's Bank was located at 679 Beacon Street, near the Prudential Center where the Massachusetts Turnpike Authority had its offices. Manzi was a member of the Turnpike Authority, and spent a couple of days a week at its offices in Boston. The \$5,000 payment could be delivered to him there.

Frank Masiello called Tarlow and asked permission for William to cash a \$5,000 check at his bank. Tarlow asked what the check was for and Masiello replied, "a political contribution." Tarlow told Frank to have William come into the bank with the check. Tarlow instructed him to have William see one of the bank officers if Tarlow was not there when he arrived.⁸⁵

According to William Masiello, Frank Masiello told him that he had talked to Tarlow and arranged for William to cash the check at the Capitol Bank and Trust Company. William Masiello took the check to the bank, where Tarlow authorized it by signing his name on the back. Masiello took the check to a teller named Fred Young, whom Masiello knew from the Worcester area. Masiello gave Young the check and received \$5,000 cash in return. When he put the cash back into the envelope from which he had taken the check, Masiello recalls that Young noticed the word "Toots" on the envelope and said, "Some young lady is going to be very lucky."

Masiello left with the cash.⁸⁶

Sherwood Tarlow appeared before the Special Commission and was asked about the call from Frank Masiello and the cashing of the \$5,000 check at his Bank. He testified as follows:

"I am sure it occurred because, if Frank Masiello had called me at that time, I would have been more than pleased to have cashed such a check. He had an ongoing relationship, up to '69 or '70, with our bank in a small way, by way of being a borrower, etc., so, even though I don't recall the exact circumstances, I know I would have, at the time, cashed such a check!

Q. It would have been logical for him to have said(the check was for) a political contribution?

A. Absolutely.

Q. You would have cashed the check?

A. Surely.⁸⁷

The Delivery to Manzi: "Is That All?"

William Masiello testified that he took the \$5,000 from the bank to the Prudential Center. He said he must have arranged in advance to meet Manzi in the Turnpike Authority's office, but cannot recall doing so. Manzi was alone in his office when Masiello arrived. He handed Manzi the envelope containing the cash, but Manzi did not open it. It was a brief meeting; the only conversation between the two men concerned the beautiful view of the Charles River from Manzi's office high up in the Prudential Tower.⁸⁹

Frank Masiello testified that William Masiello later told him that Tarlow was not there when he took the check to the bank. He also testified that William later told him that Manzi looked at the money in the envelope and said, "Is that all? When are they going to make the next payment?"

William Masiello later told his brother that he thought the check from DMJM would come back to haunt him.⁹¹ Both Masiellos have commented to Commission staff that this remark turned out to be prophetic.

On May 22, 1969, Frank Masiello executed a preliminary agreement with DMJM defining Masiello & Associates' role in the Holyoke project. The agreement did not say much more than Stanley Smith had said the previous November: Masiello & Associates' services would fall into three areas: architectural construction supervision; some of the construction supervision in the areas designed by structural, mechanical, or electrical engineers; and general consulting services, including liaison with the client and the BBC. The firm would be paid a lump-sum fee, to be negotiated later, for architectural construction supervision, and 2-1/2 times the hourly rate of employees for their services on the project.⁹²

About two weeks later, Ivan Soskel of MBM executed a contract with DMJM for cost estimating services on the Holyoke project. The DMJM/MBM contract was much more detailed and comprehensive than the DMJM/Masiello agreement. After the

execution of the contract, DMJM requested the BBC to approve MBM as a consultant on the Holyoke project. Horace Chase, Director of the BBC, approved the hiring of MBM on July 29, 1969.⁹³

PREPARATION OF PLANS AND SPECIFICATIONS

The BBC approved the master plan which DMJM prepared for Holyoke Community College on August 7, 1969. Armed with data on expected enrollments, program objectives, space needs, etc., the firm soon began the long process of developing plans and specifications. Harry Clausen came to Massachusetts several times for meetings with officials at Holyoke Community College or the BBC, but the actual design work was performed in Los Angeles.

A letter from Clausen to HCC President George Frost, dated December 3, 1969, contained one curious passage: "Could you set up a meeting for me with someone in Dan O'Connell's organization on Wednesday morning, say at 10:30 a.m., to talk about local bidding and construction practices."⁹⁴ Daniel O'Connell's Sons, Inc., was the general contractor on two of the construction projects at Holyoke Community College, and was paid in excess of \$17 million by the Commonwealth on the two projects. However, the first of those contracts was not awarded until January, 1972, more than two years after the scheduled meeting with Clausen.⁹⁵

The letter raises two questions: (1) Why did Clausen want to meet with a representative of O'Connell? Was it just a coincidence that the same firm later won two construction contracts at Holyoke? (2) Why didn't Clausen just speak to a representative of Masiello & Associates to obtain the same information? After all, helping DMJM to overcome the disadvantage of being an out-of-state firm was Masiello's role in the project as it was originally conceived; explaining the peculiarities of local laws and methods certainly falls under that heading. The proposed meeting between Clausen and O'Connell indicates that Frank Masiello was correct in believing that DMJM was trying to reduce the role of his firm in the Holyoke project.

At this time, Frank Masiello was speaking to DMJM about two problems: (1) the lack of a specific contract between Masiello & Associates and DMJM for the Holyoke project; and (2) the renewed pressure from Manzi for another payment on the \$22,000 commitment. Masiello said that Manzi just "couldn't ... understand why DMJM was reluctant to come forward and make these payments as quickly as possible."⁹⁶

The Masiello-DMJM Contract Dispute

On February 27, 1970, Harry Clausen requested the BBC to approve the hiring of Masiello & Associates as a consultant "to furnish local architectural liaison services," even though no more specific agreement had been reached on Masiello's role in the project. The request was approved by the BBC on March 25, 1970.⁹⁷

Despite much correspondence and face-to-face negotiation with DMJM, no agreement satisfactory to Masiello & Associates was reached during 1970. Frank Masiello received a proposed letter of agreement from Arthur Mann, Executive Vice President of DMJM, dated April 10, 1970. He signed the agreement on April 15, 1970, but did not return it to DMJM.⁹⁸ Masiello testified, "I came across the letter, just quickly looked at it, and then I signed it. [But], for some reason or another, a flag went up in my brain and I decided to read it once again after I signed it.... I realized this still wasn't defining what our role would be." According to Masiello, his major objections to the proposal were: (1) the lack of a clear definition of his firm's role in the project or of its compensation; and (2) a clause which appeared to make Masiello & Associates liable for errors made by DMJM on the project. He called Smith and told him he was not going to return the agreement. Masiello asked to meet with Smith to discuss the contract.⁹⁹

Masiello tried to meet with Smith during May, 1970, but was unable to do so. A letter from Smith to Masiello, dated May 28, 1980, reads, "I am sorry I was not able to see you at the time of your visit here." The rest of the letter indicates that the two firms were still far from agreeing on the terms of a contract. Smith reminded Masiello that the project was not a joint venture; Masiello & Associates was only a consultant to DMJM. He reassured Masiello that the liability clause of the contract made Masiello & Associates responsible only for errors made by its own personnel, but he did not define M & A's role in the project much more closely than it had been earlier. He said he hoped that Masiello & Associates would perform 50-75% of the construction supervision at Holyoke for a fee of \$50,000 to \$100,000, but emphasized that the figure was only an estimate, not a guarantee.¹⁰⁰ Frank Masiello was disappointed with the offer: he had expected his firm to do all the construction supervision on the project, and perform other services as well.

Masiello and Smith met at the Palm Beach (Florida) International Airport in early June, 1970. Smith called Masiello at his office and said he had a little time before his flight left. He asked Masiello to come to the airport and discuss their contract for the Holyoke project.

Masiello told Smith he was not satisfied with DMJM's contract offer because he felt it was too vague. They discussed the matter, but could not reach any agreement. They also failed to reach agreement on another project. Masiello

testified that he had been pursuing a project in Maryland in which he had invited DMJM to participate. When he subsequently learned that DMJM had been awarded the contract -- with no mention of Masiello & Associates' involvement -- Masiello was irate. He wanted some role in the project or compensation from DMJM, but Smith would give him no assurances.

DMJM's Differences with Manzi

Smith told Masiello that he had learned (from Joseph Glynn of the BBC, John Costello of the BRCC, and George Frost of Holyoke Community College) that the Governor's capital outlay budget included only \$2,778,000 for site preparation work at Holyoke Community College. Now that DMJM was well into the design of the new campus, Smith was concerned that the legislature might not appropriate construction funds for the whole project. He wondered why Manzi was not fulfilling his part of the commitment, to make sure that construction funds were included in the Governor's budget.

Masiello told Smith that Manzi had told him he had not pushed for funding for the project because DMJM wasn't making payments rapidly enough. Masiello suggested that another payment to Manzi might convince Manzi to work harder on behalf of DMJM. Masiello also hoped that another payment would relieve the pressure on William Masiello, who was now taking the brunt of Manzi's phone calls. (According to BBC records, DMJM had received only about \$30,000 in fees to that point. The \$5,000 paid to Manzi in 1969 had taken 17% of the fees paid.)

Smith asked if Frank Masiello would monitor the progress of the capital outlay budget for him. He wanted to know what was happening so DMJM could use its "friends in Massachusetts" to try to get additional funds for the Holyoke project inserted into the capital outlay budget. Masiello said he was kept in Florida by his business. He suggested that Smith contact William Masiello.

Masiello suggested a meeting with other officials from DMJM to try to resolve their contract difficulties once and for all, and to arrange another payment to Manzi. Smith agreed to set up a meeting.¹⁰¹

As a result of this meeting with Frank Masiello, Smith wrote a letter to William V. Masiello on June 11, 1970. He told Masiello that he had planned to call on him in Boston, but was called back to Los Angeles unexpectedly. The body of the letter read:

I did want to discuss with you some of the aspects of the legislative action on Holyoke, since most of the information that I have had is a reflection of what I have heard from your brother Frank, what we have heard from Joe Glynn of BBC and also from John Costello and also from George Frost of Holyoke. The consensus is that \$2,700,000 is presently in the Governor's budget for Holyoke, and I understand that the budget totals \$239,000,000. Costello believes that \$75,000,000 of those funds are "weak" in that they will probably come off the final budget due to improper timing, etc., and the \$22,000,000 for the funding of the first increment of Holyoke will end up in

the final appropriation.

I find this hard to believe, inasmuch as I do not believe that Dr. Dwyer, head of the Community College system has this project established as his first priority. It may be that he believes that George Frost's contacts with both the President of the Senate and the Speaker of the House is sufficiently strong that he can lobby this through on his own. I doubt it.

The consensus here is that the appropriation will probably be a compromise, and that say approximately half of the project will be funded for the first increment.

I would appreciate you either dropping a line or giving me a phone call as you develop any more information that would be of interest to us here regarding the project.¹⁰²

Stanley Smith's letter indicates that he was well informed on the progress of the legislation in Massachusetts, but that he needed someone outside of state government, like William Masiello, to provide him unbiased information on the capital outlay budget. Smith was undoubtedly aware of Masiello's political connections. Masiello's access to inside information would be another reason for Smith to seek Masiello's opinions and advice.

The Masiello-DMJM Meeting in Washington in June, 1970

In late May or early June, 1970, the meeting which Frank Masiello had requested took place at DMJM's office in Washington, D.C. Present at the meeting were Frank Masiello, Stanley Smith, Tevfik Kutay, William Heinkel of DMJM's Washington office, and Barry Mountain of DMJM. Although Frank Masiello had met Mountain before, he had never had any business dealings with him. Mountain was introduced as the manager of international projects and liaison officer on government contracts for DMJM.

Stanley Smith began the meeting by setting out the agenda -- discussion of (1) the Maryland project, (2) a contract for Masiello & Associates on the Holyoke project, and (3) a second payment to Manzi.

The manager of DMJM's Washington office, William Heinkel, admitted that he had not been fair to Masiello & Associates in the pursuit of the Maryland project. Masiello testified, "His apology didn't do a whole lot of good because they were already well into the project."

The topic switched to Holyoke before the Maryland question was resolved, and Heinkel was excused from the meeting. Masiello said, "He [Heinkel] ... was not aware of DMJM's involvement in contributions in Massachusetts. I believe they were attempting to keep this from him." Frank Masiello told the DMJM officials that he and his brother were still under a lot of pressure from Manzi to get DMJM to make another payment to him. He also told them that "Manzi was starting to make noises about wanting to get ... a larger sum of money paid in the guise of political contributions." Masiello expressed his hope that DMJM would soon make a second payment to Manzi, but without using Masiello & Associates as a conduit

for the payment. Finally, Masiello stated that he wanted to resolve the conflict over his firm's role in the project.

According to Masiello, there was a lot of heated discussion between himself and Smith. Kutay made occasional comments, while Mountain sat and listened. After a while, Mountain said, "Look, this isn't getting us anyplace. Let's get this matter resolved once and for all.... Let's come to an amicable solution that is agreeable to Frank." The men decided that Masiello & Associates would be paid a \$9,000 consulting fee on the Maryland project. Masiello & Associates would receive about \$100,000 for doing all the construction supervision at Holyoke Community College. It would also be compensated for the work that it had already performed on the project, and would become involved in other areas on a per diem basis.

The group then discussed the payments to Manzi. Mountain said that he was taking over for Kutay as the official in charge of the Holyoke project. He said he would see to it that payments to Manzi would be made more quickly. Masiello said that he wanted to stop acting as a go-between in the Manzi/DMJM conflict. He suggested a face-to-face meeting between Mountain and Manzi. Mountain agreed, and the meeting was tentatively scheduled for July, when Masiello would be in Boston anyway -- for a meeting at the BBC on the Holyoke project.¹⁰³

The Sonesta Hotel Meeting in July, 1970

On July 8, 1970, the evening before the meeting at the BBC on the preliminary cost estimates for the Holyoke project, Mountain, Smith, Manzi and Masiello met at the Sonesta Hotel at Logan Airport. Manzi was displeased that DMJM had made only one \$5,000 payment to him in the two years since the contract was awarded. He told Smith and Mountain that the approval of plans or invoices could be delayed, thus delaying payments to DMJM. He also told them that, if Phase II of the project were ever funded, DMJM's continued services would have to be approved by A&F. Manzi said they should not expect assistance from him in obtaining that approval if DMJM were not up to date on its commitment to him.

Smith complained that Manzi had not added construction funds for the Holyoke project to the Governor's capital outlay budget. Manzi said that DMJM had not kept its part of the deal, and reiterated that he was not going to assist DMJM until it did. Finally, Manzi stated that he wanted DMJM to pay him \$30,000 to \$40,000 (instead of \$22,000) because he had learned that the cost of the project was going to be much higher than the initial \$9 million estimates. Smith told Manzi that the construction cost was not going to be as high as he thought, but Manzi indicated he did not really believe him. Smith suggested that they go up to his room and look at the cost estimates which MBM had prepared for the meeting

the next day. Smith took the documents from his briefcase and explained the figures to Manzi.

According to a document dated July 2, 1970, the entire project was going to cost about \$23 million to construct. In order to keep the project within a \$20 million budget, DMJM proposed removing one of the buildings ("C" Building) from the construction contract, thus reducing the estimated construction cost to slightly over \$19 million.¹⁰⁴

Manzi was satisfied that Smith was telling him the truth about the magnitude of the project, but he still wanted DMJM to make a larger contribution to him. He told Smith and Mountain that he was under constant pressure to raise funds for the upcoming campaign. After some negotiation, Manzi, Mountain and Smith agreed to increase the contribution from \$22,000 to \$27,000. Mountain told Manzi that it was very difficult to get cash out of the company, and asked if Manzi would accept checks rather than cash. Manzi said he wanted only cash. Mountain then told Manzi that he would get together cash for a second payment, and personally deliver it to Manzi in a short time.¹⁰⁵

The BBC Meeting on Costs

The meeting at the BBC on the cost estimates for the Holyoke project took place on July 9, 1970. Present were Joseph Glynn of the BBC, Frank Masiello and Louis Domian of Masiello & Associates, Stanley Smith and Harry Clausen of DMJM, and representatives of Holyoke Community College, the Board of Regional Community Colleges, MBM, the landscape architecture firm of Currier, Anderson & Geda, and Jack Ryan, an aide to House Speaker David Bartley.¹⁰⁶ As a result of the meeting, certain changes were made in the plans for the new campus which increased the estimated construction cost from \$19.2 million to \$19.4 million, but still kept it within the \$20 million budget.¹⁰⁷

On that same day, the House Ways and Means Committee reported out its version of the capital outlay budget. Item 8071-68 of that bill was an appropriation of \$23,700,000 for preparation of the site and construction of the new campus for Holyoke Community College.¹⁰⁸ The appropriation was for construction of the entire campus, not just Phase I, but it matched, almost exactly, DMJM's estimate for the total cost of construction for Phase I (\$23,670,590). The Senate Ways and Means Committee reported out its version of the capital outlay budget on July 21, 1970. It amended the Holyoke item so that the \$23,700,000 was to be used only for the construction of Phase I. The Conference Committee on the capital outlay budget adopted the Senate's version of the Holyoke item, and the bill was enacted on July 29, 1970. Governor Sargent signed the bill into law on August 7, 1970.¹⁰⁹

DMJM's continued services for preparation of working plans and specification and construction supervision on Phase I of the Holyoke Community College project were recommended by BBC Director Walter Poitras on September 4, 1970, and approved by A&F Commissioner Charles Shepard on September 17, 1970.¹¹⁰

Now that construction funds had been appropriated for the project, it became more important to Frank Masiello that he obtain a contract from DMJM ensuring his firm's participation in it. He wrote a letter to Smith on August 6, 1970 stating that he had not returned the April 10 contract to DMJM because he was unhappy with certain provisions of it. Furthermore, he stated that he had not received a reply to an earlier letter he had written to Smith about the terms of the contract.¹¹¹ Smith wrote back to Masiello on August 19, 1970. He said he had just returned from Korea to find Masiello's letter waiting for him. (DMJM had an office in Seoul, Korea at that time.) He told Masiello that he had replied to his earlier letter and asked to meet with Masiello in Boston on August 30 or 31, 1970.¹¹² According to Frank Masiello, that meeting with Smith never took place.¹¹³

On September 18, 1970, Kutay sent a letter to Frank Masiello to confirm the arrangements made on the Holyoke and Maryland projects in Washington in June. The letter stated that certain portions of the work on the Maryland project would be assigned to Masiello & Associates, and also that Frank Masiello would be paid a consulting fee of \$750 per month, for a period not to exceed 12 months, for his "personal services" on the Holyoke project.¹¹⁴ Masiello signed the agreement on September 25, 1970, and returned it to Kutay on September 29, 1970.¹¹⁵

However, in a private interview with the Commission's staff, Frank Masiello stated that the \$750 per month consulting fee was actually compensation from DMJM for its taking the Maryland project away from his firm. He was told that DMJM charged the consulting fee to the Holyoke project to verify the expense to its accounting department.¹¹⁶

THE SECOND DELIVERY TO MANZI

Despite the assurances from Barry Mountain that a second payment would be made to him soon, Toots Manzi continued his phone calls to Frank and William Masiello after the July 8, 1970 meeting. DMJM had still not made a payment to Manzi by the end of the summer, so the pressure continued.

In late September or early October, 1970, Barry Mountain called Frank Masiello and said, "I have got something that Manzi has been looking for." Mountain asked Masiello if he would be in Worcester on a certain date, and Masiello said he would. Mountain told him he would come to Worcester with the

payment. Masiello did not tell Manzi that Mountain was coming because he "felt that, if Mountain didn't show... it would look like I was giving another excuse to Manzi on DMJM's promises."

Mountain arrived at Masiello's office late one afternoon. Masiello testified that it was a cold day, so Mountain was wearing a trench coat when he arrived. After some small talk, Mountain told Masiello that his briefcase contained \$6,000 in cash for Manzi. He apologized that the money was in five dollar bills. Mountain said the money had come from DMJM's office in Seoul, Korea because it was difficult to get cash out of the company. He said he felt the small denominations allowed DMJM "to get the money into the country without raising any eyebrows."

Masiello then called Manzi and told him that Mountain was in Worcester with "a pleasant surprise for him." Manzi told them to come down to the market. When Mountain and Masiello entered the market, Manzi was standing at the end of the meat counter near the scales. He asked them to wait for a few minutes while he helped a customer. Mountain and Masiello walked around the market while they waited; Mountain commented that the market had the best selection of Italian foodstuffs he had ever seen. In about five minutes, the three men went into the storage area in the back of the market.

"What in Hell am I Going to Do with Five-Dollar Bills?"

Mountain opened his briefcase and showed Manzi the money. The briefcase was a slim, dark attache case with a handle on top and snaps on each side of it. The money was banded with bank wrappers. When he saw the denomination, Manzi said, "What in hell am I going to do with five-dollar bills?" Mountain explained that he had difficulty getting cash out of the company. He said he had not taken time to convert the money into larger denominations because he knew Manzi wanted the money as soon as possible. Manzi put the money into a brown grocery bag and left the bag leaning against a grocery cart in the back room.

Manzi told Mountain that he was sure that the Governor would appreciate receiving the money because his campaign was well under way. Manzi said he hoped that DMJM would make an additional payment before the campaign ended, because he was under a lot of pressure to raise funds for TV spots, newspaper advertising, etc. Mountain again told Manzi that it was difficult to get cash out of the firm, but said he would do his best to make a third payment as soon as possible.¹¹⁷

The second payment to Manzi raised the total amount paid to him by DMJM to \$11,000. As of late September or early October, 1970, DMJM had received about \$190,000 in fees from the Commonwealth on the Holyoke Community College

project.¹¹⁸ Although it invoiced the state for another \$113,600 on October 4, 1970, it could not have received that payment before Mountain delivered the five-dollar bills to Manzi. Therefore, the \$11,000 paid to Manzi by DMJM took 5.8% of the fees the firm had received on the Holyoke project to that point.

About a week after Mountain delivered the payment to Manzi, Frank Masiello remembers receiving a call either from Albert Manzi or from his brother, William Masiello. He was told that the payment delivered by Mountain was actually less than \$6,000. Masiello called Barry Mountain. Mountain said he knew there was \$6,000 because he had counted the money himself, and he suggested that they have Manzi count the money in front of them next time.¹¹⁹ The discussion went no further after Mountain said he was sure there was \$6,000 in the briefcase.

William Masiello testified before the Special Commission that, some time later, Frank Masiello called him into his office and asked him to go down to Manzi's market and help Manzi convert \$5,000 in five-dollar bills from DMJM into larger denominations.¹²⁰ Frank Masiello does not recall that conversation. He only remembers learning about his brother's participation in the conversion of the five-dollar bills after the fact.¹²¹

The discrepancy between the amount of money that Mountain said he delivered to Manzi (\$6,000) and the amount of money that William Masiello remembered helping Manzi convert into larger denominations (\$5,000) can be explained. There is no reason to assume that Manzi had all the five-dollar bills converted. Some of the bills could have been spent before William Masiello became involved in the transaction, some of them could have been held and not converted at all. Another possibility is that Manzi was right when he claimed that the delivery had come up short of \$6,000.

William Masiello drove to Manzi's Market and met Toots Manzi there. They drove together in Manzi's car to the Milbury branch of the Blackstone Valley National Bank (now the Old Colony Bank). Masiello does not recall what Manzi said about how he had come into possession of the five-dollar bills. He does recall, however, that the money was in bank wrappers with oriental writing on them. While Manzi waited in the car, Masiello took the five-dollar bills in to one of the bank tellers. The teller used a machine to count the money, then gave Masiello \$5,000 in larger denominations. Masiello returned to the car and handed Manzi an envelope containing the cash. Manzi drove back to the market where Masiello returned to his own car and drove away.¹²²

Some time later, Frank Masiello visited the Milbury branch of the Blackstone Valley National Bank. An officer of the bank told Frank that his brother, William, had come into the bank a few days before with bundles of five-dollar bills. The officer asked, "Where on earth did he get all those five-dollar

bills?" Frank Masiello said he did not know.¹²³

Manzi's Pressure Continues

The phone calls from Manzi to Frank and William Masiello asking for a payment from DMJM resumed shortly after the second installment was delivered. Frank Masiello testified, "Bill called me quite frequently and told me how Toots was, again, pressing him [to get] DMJM to make payments." Frank Masiello could not pass the pressure along to DMJM. He said that his contacts with Smith were infrequent at this time, and that Mountain was difficult to reach because he traveled extensively, so "weeks would go by [when] it would be virtually impossible to get either one of them on the telephone."¹²⁴

"Deadbeats"

In his public testimony before the Commission, William Masiello described one particular meeting with Manzi. In October, 1970, the two men met in Governor Sargent's campaign headquarters on Park Avenue in Worcester. A number of people were in the office stuffing and addressing envelopes for a Sargent fundraising event, so Masiello and Manzi went off in a corner and had a private conversation. Manzi told Masiello that the two firms which his brother, Frank, had brought to Manzi -- MBM and DMJM -- were deadbeats; they hadn't fulfilled their parts of the commitments they made to Manzi in order to acquire contracts. Manzi indicated that both firms had paid him some money, but had fallen behind in their payments to him. He said he was holding Frank Masiello responsible for DMJM's and MBM's failure to make payments to him.

After the conversation, William Masiello called Frank in Florida. He told him what Manzi had said. Frank replied that he had paid money to Manzi for the Joseph Gentile School contract, then the contract was cancelled.¹²⁵ It was because of that bad experience with the Gentile project that Masiello had insisted that DMJM make payments to Manzi only as it received fees from the Commonwealth. Manzi's pressure did not bring about another payment from DMJM during the remainder of 1970 or most of 1971.

By December, 1970, the design of the project had progressed far enough for DMJM to construct a model of the project. The plans for the first construction contract (EJ 68-2 #1) were nearing completion, and the preliminary plans for the second contract (EJ 68-2 #2) had been approved by the BBC. Stanley Smith sent photographs of the model to HCC President George Frost, Speaker of the House David Bartley, Lieutenant Governor-Elect Donald Dwight, and BRCC President William Dwyer.¹²⁶

Frank Masiello purchased a table of tickets for a Big Brothers fundraising dinner held in Washington, D.C. on December 10, 1970. The ten tickets cost \$2,000. Among the guests Masiello invited to the dinner were Barry Mountain of DMJM and Anthony Mansueto of MBM.¹²⁷ After the dinner, Mountain and Masiello changed from formal clothes into street clothes and went to a bar not far from the Sheraton Hotel where the dinner had been held. There they discussed the Holyoke project. Mountain told Masiello that he and Smith were preparing a contract proposal, including a specific fee for Masiello & Associates' work on the project. He was hopeful that Smith would resolve the contract dispute after he returned from a trip overseas.

Masiello then told Mountain that he and his brother were getting a lot of pressure from Manzi for DMJM to make another payment to him, and reminded Mountain of his promise to Manzi that he would make a third payment very soon. Mountain said that it would be easier to make a payment soon if Manzi would accept a check. Masiello said, "Manzi doesn't want checks, he wants cash." He asked Mountain to please make another payment to Manzi. Mountain said he should be able to do so very shortly. Masiello reminded Mountain, as a parting thought, that his firm had gone for 2-1/2 years without a contract for the Holyoke project. He said he wanted to resolve that issue soon.

During their conversation at the bar, Mountain informed Masiello that DMJM was granting him a leave of absence to work in President Nixon's 1972 re-election campaign.¹²⁸

The Project Goes Forward

Despite Mountain's assurances that Masiello & Associates would soon receive a contract with DMJM for the Holyoke project, and that a payment would soon be made to Manzi, neither event occurred during the first nine months of 1971. The pressure from Manzi on William and Frank Masiello for another payment from DMJM continued, as did Frank Masiello's pressure on DMJM for a contract for his firm.

In March, 1971, Masiello & Associates submitted an invoice to DMJM in the amount of \$5,180 for work performed under "Task Order No. 1."¹²⁹ Frank Masiello testified that employees of his firm, including himself, had reviewed plans, attended meetings, etc., for DMJM on a per diem basis.¹³⁰ Stanley Smith wrote back to Masiello in April, 1971 asking for a list of the firm's employees and the hours they worked on the project. He also informed the firm that the upper limit for payment on the project was \$5,000.¹³¹ In May, 1971, Masiello told Smith that his firm had still not received \$5,000 from DMJM.¹³² Later correspondence does not mention the \$5,000 debt, so it appears that DMJM eventually paid Masiello & Associates that amount.

The first construction contract for the Holyoke Community College project was awarded on March 26, 1971. The D. Federico Company won the site preparation contract (BBC contract EJ 68-2 #1) with a bid of \$1,333,000, and soon began to blast, excavate and grade the rocky site in preparation for construction of buildings on it. The landscaping firm of Currier, Anderson & Geda supervised the project as a consultant to DMJM, instead of Masiello & Associates. The amount of ledge removed by the contractor was much greater than expected: by April 1973, when the project was finally accepted by the BBC on behalf of the Commonwealth, the construction cost had increased to over \$1.8 million. DMJM received approximately \$129,000 in fees and \$13,000 in reimbursables on the site work contract.¹³³

"I am Under a Lot of Pressure from My People"

On May 13 or 14, 1971, Frank Masiello met with Toots Manzi in Boston. Masiello attended a meeting of the Board of Registration in Architecture, and received a message from the Secretary of the Board to call Manzi at the State House. When he reached Manzi, Manzi asked when he was planning to go to lunch. Masiello said he didn't normally eat lunch, but Manzi told Masiello it was imperative that they meet, so the two men met at a small luncheonette around the corner from the State House. Sandwiches and coffee were served in the front of the shop and a small pharmacy was located in the rear.

Manzi was waiting for Masiello when he arrived. Manzi told him that he was disturbed about the repeated failure of MBM and DMJM to make payments to him. He said, "I am under a lot of pressure from my people. It is making it sound like I can't produce what I say I can, and you are just going to have to get in touch with them. You are going to have to impress on them the seriousness of the situation." Manzi said he would hold Masiello responsible for both commitments if they were not fulfilled by MBM and DMJM.¹³⁴

Masiello attempted to get in touch with Barry Mountain, but learned that he was out of the country. He spoke to Stanley Smith who said he would have Mountain contact Masiello when he returned. Masiello suggested that Mountain contact Manzi directly instead.¹³⁵

Failing to hear from Mountain, Masiello wrote a letter to Smith which contained the following line: "I would appreciate it very much if you would have Barry Mountain get in touch with me regarding the unfinished business we have been discussing for several months."¹³⁶ He testified that "unfinished business" referred to "DMJM's failing to pay Manzi as they had agreed to."¹³⁷

On June 3 and 4, 1971, Frank and William Masiello met separately with DMJM officials in Washington concerning the Holyoke project. Frank Masiello testified

that he met with Smith and Mountain at the Hayse-Adams Hotel on the evening of June 3. Masiello & Associates' expense records indicate that Frank Masiello also met with Barry Mountain at the Robin Hood Restaurant in Washington, DC on June 4, 1971.¹³⁸ Masiello told the DMJM people that the pressure from Manzi was very distracting, but that it would stop if DMJM fulfilled its commitment to Manzi. Smith said that he wanted to make sure DMJM would be selected to design Phase II of the Holyoke project if funds were appropriated by the Legislature. Masiello told him, "If you don't get your skirts cleaned with Manzi, there isn't any way Manzi is going to let you continue on with a second design contract.... I am sure he will do everything he can to block it." Mountain then said he would go to Boston with a payment very shortly, and meet Masiello and Manzi there. Masiello said he didn't want to be involved in another payment to Manzi. He stated, "You know the way to Massachusetts. You know the way to Manzi's grocery store. You can handle it without any assistance from me or from Bill."

Masiello initiated a discussion of his firm's role in the Holyoke project. He told Mountain and Smith that his firm had gone so long without a contract that he was losing interest in the project. He wanted a final resolution of the conflict -- his firm would either take an active role in the project or get out of it entirely. The threat did not work; the subject was dropped without a final resolution. Masiello said, "We had a few cocktails together, and everyone pretended ... [the discussion] never happened."¹³⁹

William Masiello testified that he met with Barry Mountain at DMJM's Washington office and asked Mountain when he was going to take care of DMJM's commitment to Manzi.¹⁴⁰ Frank Masiello testified that William Masiello told him that he had gotten Mountain (and perhaps Smith as well) to agree to make a "substantial payment of money to Manzi in the not so distant future," and to give Masiello & Associates a contract defining its role in the Holyoke project.¹⁴¹

During the trip to Washington, William and Frank Masiello also apparently met with DMJM officials concerning a proposed joint venture to design a U.S. Post Office bulk mail facility in Springfield, Massachusetts. Masiello & Associates' expense records indicate that William Masiello met with Stanley Smith of DMJM and Robert Isaacs, Deputy Assistant Postmaster General, on June 3, 1971. That same day, William and Frank Masiello also met with Barry Mountain and Robert Isaacs.

On June 29, 1971, joint venture applications for the Post Office project were submitted to the U.S. Army Corps of Engineers and to Robert Isaacs by S. Kenneth Johnson of DMJM and Frank Masiello.¹⁴³ The submission of that application indicates that relations between the two firms, though strained by Masiello & Associates' three years without a contract on the Holyoke project, had not broken down completely. In August, 1971, Stanley Smith even proposed that he and Frank

Masiello meet to discuss the possibility of jointly pursuing projects in the correctional field.¹⁴⁴

DMJM'S THIRD DELIVERY TO MANZI

On July 12, 1971 (shortly after the meetings among Frank Masiello, William Masiello, Barry Mountain, and Stanley Smith in Washington) William Masiello, Barry Mountain, and Toots Manzi met at the Sonesta Hotel at Logan Airport.¹⁴⁵ John Wackell, an employee of Masiello & Associates, testified that he drove William Masiello from Worcester to Boston that day. He and Masiello picked up Mountain at Logan Airport. Wackell then dropped off Masiello and Mountain at a hotel near the airport, he testified, and returned to Worcester.¹⁴⁶

The California Cashier's Checks

Evidence before the Commission suggests that a third payment was made by DMJM to Manzi at that meeting. On June 28, 1971 -- about two weeks before the meeting at the airport -- three cashier's checks were purchased at a branch (#314) of the Crocker Citizens National Bank at 3265 Wilshire Boulevard in Los Angeles. At that time, DMJM's main office was at 3325 Wilshire Boulevard in Los Angeles. The checks were drawn in the amounts of \$2,000, \$1,500, and \$1,500, and made payable to the Sargent Reception Committee.¹⁴⁸

On September 14, 1971, the checks were deposited into an account of the Sargent Reception Committee at the Guaranty Bank & Trust Company in Worcester (account number 4-338-1359).¹⁴⁹ According to Paul A. Hogan, the Treasurer of the Sargent Reception Committee, that account was controlled by Toots Manzi. Hogan testified that his job was to pick up from Manzi the checks and cash to be deposited and to prepare the deposit slip. He also prepared the contribution report required to be filed with the Secretary of the Commonwealth. When a cashier's check was included in the deposit, Manzi gave Hogan the name or names of the contributor(s).¹⁵⁰

The contributions deposited on September 14, 1971 were reported to the Secretary's office in the names of the following individuals: Edmund DelPrete, Anthony Tomasiello, Arthur Manzi, Charles W. Robinson, Anthony Penney, and three persons named Ames, Berry, and Sykes.¹⁵¹

Several of those individuals testified before the Special Commission. Edmund DelPrete was credited with a \$1,000 contribution. He testified that he made a small contribution, less than \$1,000, to the Sargent Reception Committee, but not through Victor Zuchero. He did not make a contribution in the form of a cashier's check issued by a California bank.¹⁵²

Anthony Tomasiello was also credited with a \$1,000 contribution to the Sargent Reception Committee. He said he cashed a \$1,000 personal check, and used the cash to purchase ten tickets to the reception from Toots Manzi. However, no cash was deposited into the account in Tomasiello's name.¹⁵³ Only \$85 in cash was deposited into the account in its entire history, and none that day.¹⁵⁴

Charles Robinson testified that he never made a contribution to the Sargent Reception Committee in the form of a cashier's check issued by a California bank, even though he was listed as making such a contribution to the Committee.¹⁵⁵ In fact, his attorney, Samuel Berman contributed \$500, using Robinson's name.

Anthony Penney testified that he made a \$200 cash contribution to Albert Manzi for the Sargent Reception Committee, but no cash was deposited into the account in his name. He was credited with a \$200 contribution that was reported as part of one of the California cashier's checks.¹⁵⁶

None of the five individuals who appeared before the Special Commission made the contributions which the Sargent Reception Committee reported they had made. In each case, they did make cash contributions which were neither deposited in the Worcester bank account nor reported by the Committee.

On September 17, 1971, the House Ways and Means Committee reported out its version of the capital outlay budget. No appropriations for Holyoke Community College had appeared in the Governor's proposed budget, but the House added to it two items for Holyoke: \$5 million for construction of the fine arts and administration building (the "C" building which had been removed from the main construction contract); and \$1 million for preparation of plans and specifications for Phase II of the project. The capital outlay budget, including the two appropriations for Holyoke Community College, was enacted by the House and Senate on October 13, 1971. The bill was signed into law by Governor Sargent on November 3, 1971.¹⁵⁷

Masiello's Continuing Contract Dispute with DMJM

At the same time that the capital outlay budget was working its way through the legislature, DMJM sent Frank Masiello a proposed contract for his firm's services on the Holyoke project. The agreement, dated October 7, 1971, would have paid Masiello & Associates \$62,000 for construction supervision on contract EJ 68-2 #2 (A, B, D, E and F buildings).¹⁵⁸

When he read the contract, Frank Masiello noticed that some of its terms differed from the verbal agreements he felt he had reached with DMJM. The construction of the five buildings at Holyoke Community College was expected to take about 18 months. Frank Masiello had expected his firm to be offered \$90,000 to \$105,000 for supervising that construction, not \$62,000.¹⁵⁹ William

Masiello testified that he had expected the firm to be offered \$240,000 for those services.¹⁶⁰

Frank Masiello felt that DMJM had reduced the offer to \$62,000 by deducting from Masiello & Associates' fees the \$11,000 which he had helped DMJM pay to Manzi, as well as the \$9,000 consulting fee charged to the Holyoke project (which was really for the Maryland job). Masiello called Smith and had a "heated" discussion with him. Smith at first denied that those items had been deducted from the offer, then said they should meet to talk about it. They arranged to meet at a convention of the Society of American Registered Architects (SARA) in Miami, Florida, in November.

Kussman Reviews the Contract for Masiello

Frank Masiello was concerned about the terms of the proposed contract with DMJM. He testified, "I thought the best way to handle this would be to ask other people that would be knowledgeable about this contract to review it for me and let me have their comments." He sent a copy of the contract to his brother in Worcester, along with a memorandum asking him to have several individuals review the contract: Louis Domian, Joseph Gildor, and John Wackell, all employees of Masiello & Associates; Donald Feldman, the corporate attorney; and Frederick Kussman, an official of the BBC.

Frank Masiello instructed William Masiello to "on the QT review it with Freddie Cushman [sic]." Frank Masiello testified before the Commission that he was referring to Frederick Kussman of the BBC. His concern was not to "obligate our firm to anything that went beyond the scope of the contract that DMJM had entered into with the Commonwealth.... I suggested to Bill [that] he ask Fred Kussman if he would be good enough as a favor to review the contract ... and to compare the DMJM contract with Masiello & Associates [to DMJM's] state contract." He instructed William Masiello to speak to Kussman "on the QT" because, he testified, he "knew by this time that the DMJM people had become extremely close to other officials in the BBC, and I didn't want to draw any ... attention to the fact that Fred Kussman was looking over our contract." Masiello described the request as an unusual one, made possible by Kussman's friendship with William Masiello and himself.¹⁶¹ William Masiello did not view the request (that Kussman review the proposed contract) as an unusual one. In a Commission interview, he said, "It wouldn't be an unusual act for me to go to Kussman to review something of this nature prior to our entering into a contract. I could get Kussman in or out of his office in five minutes."¹⁶²

The consultant contract between DMJM and Masiello & Associates would have to be approved by the BBC once it had been executed by the two firms. In 1971,

Kussman's official responsibilities at the BBC included review of contracts which were to be approved by the BBC Director. Therefore, for him to participate in negotiations between two firms concerning a consultant contract on a BBC job may have constituted a conflict of interest.

William Masiello testified that he had Kussman review the contract, although not necessarily as a result of the memo from Frank Masiello.¹⁶³ In the files of Masiello & Associates, the Commission found a four-page analysis of the contract in what appears to be Kussman's handwriting; as well as three, slightly different, typewritten versions of the same analysis. Kussman suggested amendments to the contract between DMJM and Masiello & Associates, including the following: (1) raise Masiello & Associates' basic fee above \$62,000; (2) make provisions to increase the fee in proportion to change orders approved during the construction of the project; and (3) define Masiello & Associates' responsibilities more clearly.¹⁶⁴

Frank Masiello met with William Masiello and Fred Kussman in his Miami hotel room during the SARA convention. They reviewed Kussman's comments on the contract, which had been typed up for Frank Masiello's use. Kussman told him that the DMJM proposal was "reasonably fair... and generally followed ... the contract that the Bureau had with DMJM." The major problem with the proposal, as far as Kussman was concerned, was that DMJM had offered Masiello & Associates too little money for its services.¹⁶⁶

William Masiello testified that he gave Anthony Mansueto of MBM a copy of the proposed contract during the convention.¹⁶⁷ Frank Masiello had earlier sent Mansueto a copy of the contract to review. Frank Masiello received a letter from Mansueto, dated November 15, 1971, which contained Mansueto's views on the proposal. He said he thought \$120,000 would be a more reasonable fee than \$62,000 for the work involved. He also suggested that Masiello & Associates amend the contract to base its fee on a percentage of the construction cost of the project, rather than accept a lump-sum fee.¹⁶⁸

Masiello's Further Negotiations with DMJM

Stanley Smith was a speaker at the SARA convention. One evening, he had dinner with Frank Masiello to discuss the Holyoke project. Smith admitted that he was trying to deduct the payments to Manzi from Masiello & Associates' fee. Masiello was -- his firm still did not have a satisfactory contract on the project. He told Smith "We had been jerked around from one side of the country to the other.... I had never been put in this position without having been kissed first." He told Smith that both firms had an interest in resolving the dispute: (1) Frank Masiello was planning to purchase his firm back from the Kassuba

Development Corp., then sell it to another architectural firm. He wanted to sign a contract with DMJM so that after he sold the firm he could avoid involvement in its management and could leave Massachusetts permanently. (2) DMJM's continued services for the "C" building and Phase II projects had not yet been approved. If Frank Masiello left the firm, DMJM would have to get William Masiello on its side in order to ensure the award of the two continued services contracts. DMJM could do so by giving Masiello & Associates a satisfactory contract for the project. When Smith and Masiello could not resolve their differences, Masiello suggested that they meet with Kutay and other DMJM officials in Los Angeles to discuss the contract. Smith agreed it was a good idea.¹⁶⁹

On or about December 1, 1971, Frank Masiello travelled to California and met with Stanley Smith, Tevfik Kutay, Kenneth Johnson and Arthur Mann. Masiello told them that his firm was not interested in doing the construction supervision at Holyoke Community College for only \$62,000. He told them he would withdraw from the contract unless DMJM offered more money. He told them that some officials in Massachusetts felt that the cost overruns on contract EJ 68-2 #1 could have been avoided if DMJM had pursued its duties more diligently and that DMJM's contract for Phase II of the Holyoke project was in jeopardy.

Masiello testified, "There was some concern on their part that if I left California without arriving at some kind of understanding that was suitable to me, [then] in all probability they would have trouble getting a ... contract for Phase II," because William Masiello's connections with Toots Manzi and state Senator James Kelly would enable him to block DMJM's selection for Phase II. During the meeting, Masiello received a telephone call from a well-known California architectural firm. He told the DMJM officials that the other California firm was interested in buying his firm; Frank Masiello could then end his personal involvement in the Holyoke project. Masiello felt that the call shocked the DMJM officials into coming to terms with him.¹⁷⁰

A verbal agreement was reached on the terms of a contract for supervision of the major construction contract of Phase I (EJ 68-2 #2). DMJM agreed to pay Masiello & Associates \$100,000 for its construction supervision services. It also agreed to amend certain other objectionable parts of the proposed contract by: reducing the amount of liability insurance which Masiello & Associates would be required to carry; clarifying its responsibility for errors; and allowing Masiello & Associates to be terminated only in the event of the termination of DMJM's contract by the Commonwealth.

The men also discussed Phase II of the Holyoke project. Masiello said he wanted a clear understanding of what his firm's role would be so that it did not have to go 3-1/2 years without a contract again. The DMJM officials said

Masiello & Associates would receive about 4% of DMJM's fees on the project. Its exact responsibilities would be defined later.¹⁷¹

No contracts were actually signed during Masiello's trip to Los Angeles. The verbal agreements were to be put in writing later. A contract for Phase I, incorporating the amendments approved at the meeting, was sent to Masiello & Associates by DMJM on December 20, 1971, but it was never executed by Masiello.¹⁷² On February 3, 1972, Smith sent a letter to Masiello. He wrote that Masiello & Associates would receive 2/3 of DMJM's fee for construction supervision on Phase II, or an estimated \$143,826. He also said that Masiello & Associates' fees for other consulting services would not exceed 4% of DMJM's total fees on Phase II.¹⁷³

Two major events in the history of the project occurred on December 23, 1971. (1) Bids from general contractors for the major construction contract on Phase I (EJ 68-2 #2) were opened by the BBC. The low bidder, at \$14,633,643, was Daniel O'Connell's Sons, Inc. O'Connell's contract with the BBC was executed on January 7, 1972.¹⁷⁴

O'Connell's bid was nearly \$5 million less than MBM's estimate of the construction cost of the project. Since DMJM's fee on the project was based on a percentage of the cost of construction, DMJM lost money as a result of MBM's error. William Masiello later learned that Stanley Smith was quite upset; he believed that MBM had caused DMJM to lose \$60,000 on the project.¹⁷⁵

The project was finally accepted by the Commonwealth on June 12, 1975. Change orders added over \$500,000 to the construction cost, bringing the total to over \$15 million. DMJM received approximately \$860,000 in fees and \$29,000 in reimbursables on the project. Masiello & Associates supervised the construction of buildings A, B, D, E and F as a consultant to DMJM. It worked on the project without a contract for several months.

(2) BBC Director Walter Poittrast recommended approval of DMJM's continued services for the design and supervision of the construction of the fine arts and administration building ("C" Building). However, he did not include Phase II of the Holyoke Community College project in his list of recommendations of firms and projects for continued services.¹⁷⁶ In an interview with the Commission, Poittrast stated that he recalled the excessive amount of change orders on contract EJ 68-2 #1.¹⁷⁷

DMJM'S FOURTH DELIVERY TO MANZI

On January 17, 1972, William Masiello, Toots Manzi and Barry Mountain met at the Hilton Hotel at Logan Airport. (The Sonesta Hotel had been acquired by the

Hilton chain at the beginning of the year.) In the lounge of the hotel, they discussed a project which had been proposed by Governor Sargent -- a third tunnel under Boston harbor for trucks and buses.¹⁷⁸ The Massachusetts Turnpike Authority was considering building the tunnel. Mountain told Manzi that DMJM would be interested in designing the project, but the project never became reality. However, despite having to deal with Manzi on the basis of "political contributions," the DMJM executives were apparently interested in more public contracts in Massachusetts.

The three men then went up to Mountain's room in the hotel. Manzi told Mountain that he felt the commitment DMJM had made to him (\$27,000 in cash for the Phase I contract) should be wiped out and a new deal made, because the cost of the project had increased from \$9 million to over \$15 million. Manzi recapitulated what DMJM had paid him and what it still owed him. He said he now wanted 5% of DMJM's fees on the whole project because "the ante had been raised." Mountain told Manzi that he did not have the authority to approve an increase in the commitment. He said he would get back to Manzi.

Mountain then handed a standard number ten envelope to Manzi, who put it into his black, zippered briefcase without opening it. Mountain said, "With what we're paying you today, that takes care of the original deal." There was no discussion of the contents of the envelope at the time. The meeting broke up and William Masiello drove Manzi back to Worcester.

More Cashier's Checks

The next day, Manzi called Masiello and asked him to come down to the insurance agency of his brother, Arthur Manzi. Toots Manzi had a small office there because Manzi's Market had been sold to The Guaranty Bank & Trust Co. It had closed on February 1, 1971, and later re-opened as a branch of that bank.¹⁷⁹ When Masiello arrived, Manzi showed him five \$3,000 cashier's or treasurer's checks. Masiello testified that Manzi was upset because Mountain had given him checks instead of cash. He was also upset that, having given him checks, Mountain had not given him names to list as the contributors of the checks, too. He said, "I have to come up with names. They knew the deal was cash. Where do I come up with names?" Masiello called Mountain in Washington and told him that Manzi was unhappy.¹⁸⁰

The payment of \$15,000 to Manzi in January, 1972, brought the total paid to Manzi to between \$26,000 (the payments in which Frank and/or William Masiello participated) and \$31,000 (if one includes the \$5,000 in checks which were apparently given to Manzi in July, 1971). DMJM had received about \$634,000 in fees on the Holyoke Community College project as of January, 1972.¹⁸² It paid

4% to 5% of those fees to Manzi.

On January 11, 1972, six days before the meeting at the Hilton Hotel at Logan Airport among Manzi, Mountain and Masiello, three cashier's checks were purchased at a branch of the Bank of California at 3250 Wilshire Boulevard. DMJM's offices had moved from 3265 Wilshire Boulevard to 3250 Wilshire Boulevard since the purchase of the first group of cashier's checks. The checks were drawn in the amounts of \$2,000, \$3,000, and \$3,000, and made payable to the Sargent Reception Committee. The \$2,000 check was deposited in the Sargent Reception Committee account at the Guaranty Bank & Trust Co. in Worcester on February 7, 1972. The two \$3,000 checks were deposited in the same account on March 30, 1972.¹⁸³

It is not known if these were some of the same checks which Toots Manzi showed William Masiello, but it seems likely that the three checks were part of the \$15,000 payment about which Masiello testified. It is possible that one of the checks Masiello saw was in the amount of \$2,000, rather than \$3,000. It is not known what happened to the other two \$3,000 checks. The Commission was able to obtain the records for only one account of the Sargent Reception Committee, so it is possible that the checks were deposited into another bank account or cashed.

No cash was deposited in the Sargent Reception Committee account on February 7, 1972. Checks totalling \$4,300 were deposited in the account, but only \$3,800 was reported to the Secretary of State's office. Of the \$2,000 cashier's check from California, \$1,500 was reported in the names of two individuals: \$1,000 in the name of Aubrey Batstone, and \$500 in the name of Alfred Simoncini.¹⁸⁴ Batstone testified that he did not contribute to the Sargent Reception Committee.¹⁸⁵ Simoncini testified that he attended a Sargent Reception Committee dinner at the Pleasant Valley Country Club because Toots Manzi gave him two free tickets, but that he did not contribute to the Sargent Reception Committee.¹⁸⁶

No cash was deposited in the Sargent Reception Committee account on March 30, 1972. The \$6,000 was reported as contributions in the names of six individuals: Irving Bello, Donald Smith, Robert G. Lotuff, Robert Krupa, and two persons named Knowlton and Corrigan. Each one was listed as a \$1,000 contributor to the Committee.¹⁸⁷ Irving Bello testified that he contributed \$1,000 in cash to the Committee, but no cash contribution was reported in his name.¹⁸⁸

Donald Smith testified that he raised \$475 for the Sargent Reception Committee and delivered it to Albert Manzi. Of that amount, he contributed \$200 cash and a \$100 check himself, and received three tickets for the Sargent Reception Committee dinner in exchange. Manzi asked Smith if he could use his name as having purchased a table of tickets for the dinner; Smith agreed. He didn't understand that when he agreed it meant he would be put down for a \$1,000

contribution. Manzi did not tell Smith that he was going to attribute to him part of a contribution made by a cashier's check issued by a California bank.¹⁸⁹

Robert G. Lotuff testified that he gave \$500 on the day of, or the day before, the dinner. He received two tickets in exchange for his contribution.¹⁹⁰

Robert Krupa is the brother-in-law of former State Comptroller M. Joseph Stacey. Stacey testified before the Commission that Manzi asked him for names to which he could attribute campaign contributions. Stacey gave him the names and addresses of his daughter and brother-in-law. When Stacey saw their names listed in the Boston Globe as contributors to the Sargent campaign, he confronted Manzi. Manzi said it didn't matter because they were from out-of-state. He also threatened that Stacey might not be re-appointed as State Comptroller if he objected.¹⁹¹

Further Masiello-DMJM Negotiations

During the first part of 1972, negotiations continued between Masiello & Associates and DMJM concerning a contract for construction supervision on contract EJ 68-2 #2. William Masiello testified that DMJM was using Joseph Glynn, head of the BBC's construction section, as a "wedge" in the negotiations. Masiello felt that Glynn was intervening in the negotiations on behalf of DMJM. He said, "Every time I got on first I would be thrown off first because Glynn would enter the picture."

Masiello asked the then Senate President, Kevin Harrington, to speak to Glynn "and tell him to keep his nose out of the affairs of DMJM and Masiello." Masiello's close relationship with Senator James A. Kelly enabled him to ask that favor of Harrington. He chose Harrington to speak to Glynn because Glynn was supervising a BBC contract for renovation of Harrington's office at the time.¹⁹² Masiello said that Glynn had been name-dropping around the BBC, and implying that Harrington was a friend of his. According to Masiello, Harrington spoke to Glynn, then Glynn apologized to Masiello. Glynn said, "We will bury the hatchet."

In a private interview, Joseph Glynn said he had been involved in the negotiations between DMJM and Masiello & Associates. As head of the BBC construction section, Glynn was concerned that DMJM might delegate all responsibility for construction supervision to Masiello, and then not be available to consult with BBC officials on problems that might arise during construction of the buildings. He wanted DMJM to retain for itself some role in construction supervision. Glynn admitted that his intervention could have been perceived as threatening to Masiello & Associates.

Glynn also said that he spoke with Kevin Harrington about the Masiello & Associates/DMJM negotiations. Harrington asked him what was going on with Masiello & Associates' contract for a community college. Glynn asked Harrington if he were referring to the Holyoke Community College project, and Harrington said he was. Glynn told him that Masiello & Associates was a consultant to the designer, not the designer of the project, and that the BBC did not have a contract with the firm. Glynn said that Harrington was satisfied with his response.¹⁹³

DMJM'S FIFTH PAYMENT TO MANZI

On March 2, 1972, another \$2,000 cashier's check was purchased at the Bank of California branch located in the same building as DMJM's offices. Unlike the other checks, the name of a remitter appears on this check -- Lee Jenson. A man named Raymond Lee Jenson was employed by DMJM at the time as Assistant to the Comptroller. The check was deposited in the Sargent Reception Committee account at the Guaranty Bank & Trust Co. on May 2, 1972. It has been impossible for the Special Commission to determine in whose name(s) the \$2,000 contribution was reported. Listed on May 12, 1972 as having made contributions to the Committee were sixteen individuals for whom corresponding deposited items were not found in the Sargent Reception Committee's account. They were credited with a combined contribution of \$3,000 to the Committee.¹⁹⁴

The contribution brought the total payments to Toots Manzi by DMJM to between \$26,000 and \$33,000. William and Frank Masiello participated in the payment of \$26,000 to Manzi. Another \$7,000 in California cashier's checks were apparently given to Manzi without the aid of the Masiello brothers.

It is possible that this last \$2,000 check was given to Manzi on April 7, 1972. Shortly after Frank Masiello purchased Masiello & Associates back from Kassuba Development Corp. in February, 1972, the firm's Worcester offices moved from 791 Main Street to the Mechanics National Tower. On April 7, 1972, the firm held an open house in its new quarters.¹⁹⁵ Other architects, engineers, contractors, subcontractors, and friends were invited. Frank Masiello testified that Toots Manzi and Barry Mountain were among the invited guests. Both William and Frank Masiello recall seeing Mountain and Manzi talking by themselves in one of the offices during the open house.¹⁹⁶ It is likely that the topic of DMJM's continued services for Phase II came up in their conversation. The firm's continued services had not been approved in the four months since funds were appropriated for Phase II.

DMJM'S CONTINUED SERVICES FOR PHASE II

In May, 1972, interest in the approval of DMJM's continued services for Phase II increased. John Costello, Executive Director of the Board of Regional Community Colleges, wrote a letter to A&F Commissioner Robert L. Yasi which was directed to the attention of Deputy Commissioner Albert Zabriskie. Costello told him that the BRCC "strongly endorses" DMJM for a continued services contract for Phase II.¹⁹⁷ In a private interview, Costello stated that it was an unusual action for him to write the letter recommending DMJM. The BRCC did not usually become involved in the continued services approval process. Costello could not recall why he wrote the letter.¹⁹⁸ One month later, the BRCC voted to notify the Designer Selection Board that it "urgently recommended" approval of DMJM's continued services for Phase II.¹⁹⁹

On May 19, 1972, HCC President George Frost requested Speaker David Bartley's assistance in obtaining approval of DMJM's continued services. Frost asked Bartley to call Zabriskie, who was in charge of the EBC and speak to him about it.²⁰⁰ It is not known if Bartley called Zabriskie.

Masiello Uses Manzi's Leverage over DMJM

William Masiello testified that, by July or August, 1972, the EBC was ready to approve DMJM's continued services for Phase II. Masiello & Associates still did not have a contract for construction supervision on Phase I, much less Phase II, so Masiello went to see Manzi at his brother's insurance agency. He told Manzi that DMJM "was trying to come in through the back door" to get the Phase II contract, without fulfilling its obligations either to Manzi or to the Masiello firm. He told Manzi that he was shocked that DMJM could get Phase II without going through him, and suggested that Manzi intervene and hold up the approval of DMJM's continued services. If DMJM decided it didn't want to talk to him, Manzi could cause the project to be referred back to the Designer Selection Board for the selection of a new architect for Phase II. Masiello also planned to use Manzi's leverage over DMJM to obtain contracts for his firm.²⁰¹ Masiello said, "I invented the attack, told Manzi about it, and asked him to back me."²⁰²

Masiello testified that he subsequently set up a third meeting among Manzi, Mountain, and himself. It was again held in the lounge of the Hilton Hotel at Logan Airport. Manzi told Mountain that he had the power to hold up the award of the Phase II contract to DMJM, or even send the project to the Designer Selection Board so that a new architect could be chosen. Manzi said he wanted 5% of DMJM's fees on Phase II, or else he would take Phase II away from the firm.²⁰³

Throughout the summer of 1972, William and Frank Masiello negotiated William's purchase of Masiello & Associates from Frank. Though they reached agreement on the terms of a contract in October, William Masiello actually took control of the firm earlier than that. A formal agreement was executed in December, 1972.²⁰⁴ Because of his residence in Florida and the impending sale of the firm to his brother, Frank Masiello became less and less involved in the Holyoke Community College project during 1972. The open house for the firm's new office was Frank Masiello's last direct contact with Mountain and Manzi on the Holyoke project.²⁰⁵

Masiello Uses Influence in the BBC as Leverage Over DMJM

William Masiello kept his brother informed of the progress of the project and on his negotiations with DMJM. He sent Frank Masiello an undated telex message which, it appears, from the text, to have been sent in late September, 1972.²⁰⁶ The message (with abbreviations spelled out) read:

This is a beautiful communication machine, but I am sure that it is still easier to call and less expensive. The communications that we have been receiving have all been typed out completely as this is. I am sure the abbreviations don't make that much difference. Talked to Toots yesterday and he informs me that Poittrast has been notified he is to release the Holyoke project. You should point out to Stan Smith when you notify him that because of the large amount of change orders that were taken out of the ground has made the Commonwealth very reluctant to give DMJM the second phase. It is only because of us that he is still on the contract. Both California companies that have done jobs in Massachusetts have created many problems that would not have existed if Massachusetts firms had designed them. If there was any way that we were large enough to do this job on paper, we would have no problems getting it alone. Fred K. will be talking to me tomorrow on the contract. As soon as I hear, I will contact you. Still not happy with the contract between us and DMJM on the second phase, and I believe that we are coming up short. You should open the negotiations with DMJM again before they receive the new contract. I hope you understand the communication.

Frank Masiello replied:

Attention: W.M. Not necessary to go over previous details, understand your problem. Notify S. Smith of release per your instructions. Will contact Smith by phone this afternoon. Will advise you as soon as possible of conversation. If we can do the job, then can we do working drawings in Worcester? I will go along with whatever you say. Have F.K. hold up contract completion, if possible.²⁰⁷

Frank Masiello testified that he understood "Toots" to refer to Albert P. Manzi, and "Fred K." or "F.K." to be Frederick Kussman of the BBC. He also testified that the release of the Holyoke project by Poittrast referred to approval of DMJM's continued services for Phase II, while the delay in contract completion to be caused by Kussman referred to execution of DMJM's contract with the BBC for Phase II. The contract for Phase II with which William Masiello was unhappy was the offer of 4% of DMJM's fees for Phase II.²⁰⁸

The telex message reflects a change in strategy by William Masiello. Besides causing the award of Phase II to DMJM to be delayed so that he and Manzi could negotiate with DMJM, Masiello was now pointing to the very delay that he had

caused as evidence that DMJM's Phase II contract was in jeopardy. He claimed credit for saving DMJM from a peril that he himself had caused.

Frank Masiello explained what his reply to William Masiello meant: "I was referring for Bill's benefit that he should suggest to Fred Kussman if there was any way of delaying the preparation of the contract documents, ... this would give Bill a few extra days to have an opportunity to talk to DMJM's people."²⁰⁹

On September 28, 1972, BBC Director Walter Poittrast recommended the approval of DMJM's continued services for Phase II. He wrote: "The BBC memorandum [on December 23, 1971] did not include the recommendation for the continued services of Daniel, Mann, Johnson, Mendenhall because the Bureau wished to be in a position to evaluate the results of construction bids for Phase I, which were imminent. We are pleased to report that Phase I, estimated to cost \$16,680,000, came in at \$14,633,643.

"The Board of Regional Community Colleges is most pleased with the performance of the project architect and the Bureau of Building Construction has no derogatory reports, which prompts our recommendation...."²¹⁰

That explanation for the nearly year-long delay in the approval of DMJM's continued services is not credible. The bids for contract EJ 68-2 #2 were received on the same day that DMJM's continued services for design and construction supervision of the fine arts and administration building were recommended by Poittrast. The BBC need only have delayed approval of DMJM's continued services for Phase II by hours or days to evaluate the bids received on the contract, certainly not ten months. The implausibility of the excuse increases the credibility of William Masiello's claim that Manzi used his influence to delay the approval of DMJM's continued services.

A&F Commissioner Yasi approved DMJM's continued services for Phase II on October 11, 1972. BBC Director Poittrast (in a letter drafted by Frederick Kussman and dated October 17, 1972) then notified DMJM that it had been appointed as the designer for "further development of Holyoke Community College, Phase II." No estimated construction cost for Phase II was mentioned in Poittrast's letter.²¹¹

DMJM had not yet received its contract for Phase II, even though its continued services for the project had been duly approved. William Masiello intended to take advantage of that fact. He went in to see Poittrast and asked him to hold up DMJM's Phase II contract until he was able to obtain a contract from DMJM for Phase I. He told Poittrast that, since DMJM told the Designer Selection Board it intended to use Masiello & Associates as its local architectural consultant when it originally applied for the Holyoke job, Masiello should still have the chance to try to negotiate a contract for its participation

in the project. Poitrast agreed to hold up the execution of DMJM's contract with the Commonwealth,²¹² even though his superiors had approved the award of the contract, so that Masiello could take advantage of the delay to pursue its own negotiations with DMJM.

The next telex message to William Masiello in Worcester from Frank Masiello in Florida concerning Holyoke Community College (with abbreviations spelled out) reads:

Attention Bill: Smith called this morning from Ohio. Barry had lunch and visited White House with Lieutenant Governor Dwight yesterday. As soon as DMJM receives notification of Holyoke, Smith will come to Boston and review our particulars on phase two. We have not signed anything yet on phase two, or for that matter phase one, but I would be sending phase one instruction back this week. Maybe you can get F.K. to send letter to DMJM asking them to set date to come to Boston to discuss contract. Smith happy project finally moving.

William Masiello replied:

Attention F.R.M.: I will notify Stan Smith that the project is definitely in the works. Poitrast and Kussman have this past minute completed all the details on this with exception of fee. This is still open. Poitrast should be out within the next two weeks, and if not, when my friend gets back from San Francisco I will call him.²¹³

Frank Masiello testified that the "Barry" to whom he referred was "Barry Mountain who at that time was on a leave of absence from DMJM and was then employed by the Committee to Re-elect the President.... Stan Smith told me that Barry had met Lieutenant Governor Dwight in Washington and he had invited him to visit the White house with him."²¹⁴ It is not known whether Dwight and Mountain discussed the Holyoke Community College project. "F.K." referred to Frederick Kussman.²¹⁵

Frank Masiello said he believed his brother's friend in San Francisco was Senator James Kelly. He said, "I believe that [William Masiello] was going to attempt to use James Kelly to talk with possibly someone at BBC to see what could be done to give Bill time to re-negotiate the contract with DMJM."²¹⁶ Masiello also said that Senator Kelly called Smith at one point and told him that the funds for Phase II could be held up if the contract dispute between Masiello and DMJM were not settled.²¹⁷

DMJM'S SIXTH DELIVERY TO MANZI

Stanley Smith came to Boston on November 7, 1972, and stayed at the Sheraton Boston Hotel.²¹⁹ William Masiello met with Smith on that day. Masiello came to pick up a payment from DMJM to Manzi. He knew ahead of time that the payment was going to be made, but does not recall how he learned about it. Smith handed Masiello a letter-sized envelope for Manzi. He said it contained \$10,000, but Masiello did not look in the envelope.

Masiello took the envelope to Manzi at his home in Paxton that evening. Manzi took Masiello to the basement of the house; half of the basement was finished, and the other half unfinished. Masiello handed Manzi the envelope, and he took it into the unfinished part of the basement. After he came back out, they had a drink of scotch and played ping-pong.

The \$10,000 payment to Manzi brought DMJM's total contributions to him to between \$36,000 and \$43,000. Frank and/or William Masiello had participated in the payment of \$36,000 to Manzi. Another \$7,000 had apparently been paid to Manzi without them. As of November, 1972, DMJM had received about \$925,000 in fees from the Commonwealth on the Holyoke Community College project.²²⁰ Between 3.9% and 4.6% of those fees were paid to Toots Manzi.

The next day, November 8, 1972, Stanley Smith and William Masiello met to negotiate the last details of the contract between Masiello & Associates and DMJM for construction supervision on Phase I. Finally, after over four years without one, Masiello & Associates had a contract with DMJM for construction supervision on Phase I. William Masiello signed the contract. It provided that his firm would be paid \$92,020 for its services on the project. However, the two men were unable to reach agreement on the terms of contracts for Masiello & Associates to supervise the construction of "C" building and Phase II. Because he did not want to go through the same long process of negotiation on those contracts as his brother had on Phase I, Masiello decided to go to Los Angeles to meet with Smith's superiors and obtain contracts for the two projects. He told Smith there was no way that DMJM's Phase II contract with the BBC would be signed until his own firm's Phase II and "C" building contracts were resolved.

After they finished their negotiations, Smith and Masiello went out to dinner with the then State Comptroller M. Joseph Stacey. Stacey took Masiello's car back to Worcester and the other two went to the Jazz Workshop in Boston. Masiello stayed over at the Sheraton that night because he "drank a little too much." Smith returned to California on November 9, and William Masiello had someone from his firm pick him up in Boston and drive him back to Worcester.²²¹ Stacey said he recalled eating dinner with Smith and Masiello at the Sheraton Boston Hotel.²²²

On November 14, 1972, shortly after his trip to Boston, Stanley Smith informed Walter Poitras that DMJM accepted its appointment as the designer of Phase II of the Holyoke Community College project.²²³ Two days later, Smith wrote letters to Donald Dwight and David Bartley, thanking them for their support on the Holyoke project.²²⁴

MASIELLO'S TRIP TO CALIFORNIA

William Masiello and Worcester County Commissioner Philip Philbin flew to Los Angeles on Friday, November 17, 1972. Masiello was going to a Monday meeting at DMJM. Philbin drove Masiello to Logan Airport and decided, on the spur of the moment, to go along to California (without even a change of clothes). On Saturday, they flew to Las Vegas and stayed there until Sunday morning when they returned to Los Angeles. On Sunday afternoon, Masiello went to see the Los Angeles Rams - Minnesota Vikings football game with Stanley Smith. Minnesota won by the score of 45 to 41.²²⁵ They went to the Bull & Bush after the game.

On Monday morning, November 20, 1972, William Masiello met with the DMJM officials on the Holyoke project. Masiello's attorney, William Bernstein, had flown in from Kansas City the night before. Masiello and Bernstein arrived at DMJM's offices on time for a 9:30 a.m. meeting, but were kept waiting in the lobby. Masiello became upset and told the receptionist that they had come three thousand miles for the meeting and were on time, while Stanley Smith only had to walk from one end of the building to the other. Smith immediately came down to greet them, then gave them a tour of the DMJM offices. He introduced them to all the partners in the firm. One of them, Al Dorman, had an enclosed office, while all the others had only partitions. Masiello concluded that Dorman was the "chief in charge."

Smith, Bernstein, and Masiello began their discussions in a circular conference room on the fifth floor of DMJM's building, one floor below the executive offices. The negotiations broke down within minutes, so they all went up to Dorman's office. DMJM had prepared charts showing what both DMJM and Masiello & Associates would receive for construction supervision on "C" building and Phase II. Masiello was not satisfied with the offers because DMJM was going to receive more than 50% of the money for construction supervision on each project. He told Smith and Dorman he felt it was time for DMJM to make restitution to Masiello & Associates.

Masiello also told them that MBM's error on the cost estimate for Phase I was no excuse -- DMJM had recovered its losses because the fine arts and administration building project was an add-on, and also because DMJM would receive more money for designing two smaller projects than if the two projects were combined into one larger project. DMJM then increased its offers to Masiello & Associates: (1) the firm would be paid 55% of DMJM's fees for construction supervision on "C" building; and (2) DMJM would check the mechanical shop drawings on Phase II, instead of Masiello & Associates. The Worcester firm would save a great deal of money by avoiding that chore. William Masiello

accepted DMJM's offers on both projects, but no agreements were signed while he was in California.

They all went to lunch in a lounge area located within DMJM's offices. Fifteen to 20 top DMJM officials were there to partake of the buffet and the bar. Masiello had a few drinks and talked to various DMJM officials. One topic of conversation was Richard Nixon's recent landslide election, and George McGovern's success in Massachusetts. Masiello was impressed by the spread. The DMJM officials led him to believe it was an everyday occurrence. He asked the woman behind the buffet if they did this every day. She said the last time was back in March when the Mayor of San Francisco visited DMJM's offices.

After lunch, Masiello met with Dorman in his office. He asked for 5% of DMJM's fees on Phase II as a finder's fee for himself, because he had performed services for DMJM in Massachusetts. He told Dorman that Walter Poitras was unhappy with DMJM's performance on the job, and that only Masiello's political influence was keeping DMJM on the job. Masiello said he could help DMJM or hurt it. He could help DMJM obtain construction funds for Phase II through his relationship with state Senator James Kelly, Chairman of the Senate Ways and Means Committee. But he threatened to prevent DMJM from receiving its contract for Phase II from the BBC if it did not meet his demand for a finder's fee. Dorman told Masiello that DMJM had already agreed to pay Manzi 5% of its fees, and that DMJM could not afford to pay out much more than 5%, especially since cash would be involved. He offered Masiello 1% of DMJM's fees on Phase II. Masiello accepted.²²⁶

Masiello flew back to Boston on Tuesday morning, November 21, 1972. He arrived about 6:15 a.m., then went home and slept all day. A short time later, he called the BBC and spoke to either Walter Poitras or Fred Kussman. He said he was satisfied with his agreements with DMJM, and gave the BBC permission to release DMJM's Phase II contract.²²⁷ The contract between DMJM and the BBC was executed on November 30, 1972 -- just nine days after Masiello returned from California, but over a year after \$1 million had been appropriated for preparation of plans for Phase II.²²⁸

In late December, 1972, William Masiello received the contracts from DMJM which he had successfully negotiated in California. Both contracts were dated December 13, 1972. Smith sent them to Masiello on December 20, 1972, along with a letter apologizing for the delay. The contract for construction supervision on "C" building stated that Masiello & Associates would be paid \$23,487 for its services. The agreement was apparently executed by William Masiello, but no executed copy of the agreement was found in the files of Masiello & Associates. The contract for Phase II construction supervision provided that Masiello &

Associates would be paid \$124,056 for its services, but the agreement was apparently never executed by Masiello & Associates.²²⁹

On January 10, 1973, Dorman wrote to Raymond Allard, President of Masiello & Associates. He told Allard that the firm would be paid 1% of DMJM's fees on Phase II for "general liaison and coordination." He also stated that the firm would be paid a retainer of \$600 per month which would be considered part of its fee for construction supervision.²³⁰ The 1% agreement was the "finder's fee" which Masiello had discussed with Dorman in California.²³¹

The estimated construction cost (ECC) for Phase II was set at \$18,000,000 by the BBC in January, 1973. In July, 1973, the ECC was increased to \$21,670,000.²³² Phase II promised to be even more profitable for DMJM than Phase I.

In February, 1973, Masiello & Associates submitted an invoice to DMJM for \$18,404 for construction supervision on contract EJ 68-2 #2.²³³ Because DMJM has refused to cooperate with the Special Commission's investigation, and because Masiello & Associates' records of cash receipts are not complete, it is impossible, at this time, to determine whether DMJM paid the firm this, or any other, fee.

THE END OF THE MASIELLO-DMJM RELATIONSHIP

The relationship between Masiello & Associates and DMJM began to break down in April, 1973. DMJM sent M&A a new contract for construction supervision on "C" building, dated April 20, 1973. M&A's fee was reduced by more than \$4,000 to \$19,350 in the new contract. The contract was executed by William Masiello, but the Commission has been unable to obtain an executed copy of the contract.²³⁴

On April 27, 1973, DMJM sent M&A a revised contract for construction supervision on Phase II. DMJM reduced its fee offer by about \$15,000 to \$110,340. William Masiello did not sign the revised contract.²³⁵

The contract to construct the fine arts and administration building at Holyoke Community College ("C" building) was awarded to the H. P. Cummings Construction Company on May 4, 1973 for \$2,483,700. By the time the project was completed in October, 1975, the construction cost had increased to approximately \$2.6 million. DMJM received about \$164,000 in fees and \$15,000 in reimbursables on the contract.²³⁶

Masiello signed the contract for "C" building on May 31, 1973. The next day, he met with Stanley Smith in Boston,²³⁷ probably to discuss the revised contract proposals submitted by DMJM.

Masiello testified that "When we were out in California, it was agreed that we were going to get 55% of the contract on "C" buildings but we ended up getting less than 50%."²³⁸ On June 4, 1973, Masiello notified DMJM, by telegram, that he wanted to terminate the contract for "C" building which he had signed on May 31, 1973. He wanted to reopen negotiations because Masiello & Associates would not be able to perform the services required for the fee agreed upon.²³⁹ The next day, Masiello sent a second telegram to DMJM asking for a fee of \$30,000 for construction supervision on "C" building.²⁴⁰ Joseph Gildor, an engineer employed by Masiello & Associates, sent a letter attempting to justify the request for \$30,000 by showing the number of site visits by M&A personnel that would be required during the construction of "C" building.²⁴¹

Finally, on June 12, 1973, William Masiello sent a telegram to DMJM withdrawing all proposals for present and future contracts. However, he stated that Masiello & Associates would fulfill its obligation to supervise the construction of Phase I (contract EJ 68-2 #2).²⁴² Masiello testified that he intended to break off negotiations on "C" building only. He dictated the telegram; it was only later that he realized he had also withdrawn his firm from Phase II.²⁴³

On June 14, 1973, however, Raymond Allard informed BBC Director Poittrast that Masiello & Associates would no longer act as a consultant to DMJM on the Holyoke Community College project after it finished supervising the construction of the five buildings. He told Poittrast that the two firms had been unable to reach agreement on the terms of a contract for further services.²⁴⁴ Poittrast replied to Allard's letter on June 19. He said that Masiello & Associates had no obligation on any contract at Holyoke Community College other than EJ 68-2 #2 as far as the BBC was concerned.²⁴⁵ Masiello & Associates was involved in that project until the spring of 1974.

DMJM replaced Masiello & Associates on the Holyoke project very quickly. On June 20, 1973 -- only eight days after Masiello & Associates withdrew from the project -- Harry Clausen of DMJM informed the BBC that Caolo & Bieniek, of West Springfield, Massachusetts, was going to replace Masiello & Associates as the construction supervisor at Holyoke Community College.²⁴⁶ It was going to be paid \$28,700 for its services. On July 17, 1973, Al Dorman of DMJM wrote to William Masiello to inform him that his firm had been replaced on Phase II as well as "C" building.²⁴⁷

Even after DMJM finally received its contract from the Commonwealth for Phase II, the project was delayed for other reasons. On September 24, 1973, BBC Deputy Director George Rushton requested approval from A&F for DMJM to proceed with preparation of working plans and specifications for the campus center and the

physical education building, the first two projects of Phase II.²⁴⁹ The BBC apparently gave DMJM permission to proceed on the projects. But on January 30, 1974, Walter Poitras instructed DMJM to stop work on the projects because the BBC had been unable to obtain funds from the budget office.²⁵⁰ The project became active again some time later in 1974.

BBC construction contract EJ 68-2 #3, for finish site work at Holyoke Community College, was awarded to Daniel O'Connell's Sons, Inc. on November 29, 1973. The firm's winning bid was \$1,750,515. By the time the project was accepted in December, 1975, change orders had added about \$90,000 to the cost of the project. DMJM received approximately \$125,000 in fees and \$3,000 in reimbursables on the contract.²⁵¹

Just before the end of the Sargent administration, another delay occurred in the design of the campus center and the physical education building. John Costello, Executive Director of the BRCC, wrote a letter to Speaker of the House David Bartley requesting his help in getting funds for the projects released by A&F.²⁵² On December 9, 1974, John Eller of Bartley's staff requested that A&F Commissioner David Marchand meet with Bartley on December 19, 1974. Marchand approved the preparation of final plans and specifications for the projects on December 13, 1974, before the meeting with Bartley was scheduled to take place.²⁵³

It is possible that the two delays in the release of funds for Phase II were due to normal delays. However, it is also possible that the delays were caused by Toots Manzi in order to put pressure on DMJM to make payments to him on its commitment to pay him 5% of its fees on Phase II. The last delay ended just weeks before the inauguration of Democrat Michael S. Dukakis as Governor. The project moved forward without serious delays after Governor Francis Sargent left office.

In February, 1975, William Masiello tried to renew his firm's relationship with DMJM on Phase II. He wrote to Dorman and said he was pleased that Phase II was no longer dormant. He told Dorman he was eager to meet with representatives of DMJM to discuss the project.²⁵⁴ Harry Clausen replied to Masiello's letter and informed him that Masiello & Associates had been replaced on Phase II.²⁵⁵ Masiello had not seen the earlier letter from Dorman, and was surprised to learn that his firm had been replaced. He told Clausen that he must be mistaken, and threatened to refer the matter to his attorneys.²⁵⁶ He later wrote to Dorman about the 1% deal on Phase II, which had been cancelled by DMJM along with the construction supervision contract. He said to Dorman, "I am very appalled that you are not living up to what you and I discussed behind closed doors."²⁵⁷ Stanley Smith replied that DMJM had no agreement with Masiello & Associates on

Phase II.²⁵⁸ By then Masiello knew he had been cut out of the project, but got in his parting shot in a letter to Smith. He told Smith to talk to Dorman, "since he was the one who made the rules."²⁵⁹

In November, 1975, a small construction contract (EJ 68-2 #10) was awarded to the ACMAT Corporation. It bid \$101,200 to construct a food services laboratory at Holyoke Community College. The project was accepted in May, 1976. DMJM received approximately \$14,000 in fees and \$1,500 in reimbursables on the contract.²⁶⁰

On October 26, 1976, Governor Dukakis signed into law a capital outlay bill, including \$5,250,000 for construction of the campus center at Holyoke Community College.²⁶¹ A contract to construct the project (EJ 68-2 #5) was awarded to Granger Brothers, Inc. on July 10, 1978 for \$4,561,924. The project is under construction. DMJM has received about \$185,000 in fees and \$60,000 in reimbursables on the project thus far.²⁵²

Several Phase II buildings have not yet been constructed, but have been partially designed by DMJM. They are: the physical education building (estimated construction cost, \$5,620,000); additions to the central plant and maintenance facility (ECC, \$5,400,000); additions to buildings B and D (ECC, \$5,100,000); and additional site work (ECC, \$1,230,000). DMJM is the designer of record for all those projects.²⁶³ Unless DMJM's contract with the BBC for Phase II of the Holyoke Community College project is cancelled, DMJM will remain on the project. The projects will move forward when additional funds are appropriated by the Legislature.

CONCLUSION

The story of the new campus for Holyoke Community College is a case history of bribery, illegal campaign fundraising, and the manipulation of the public contract award process by a few well-connected individuals. Because of the existence of corporate and public records, correspondence, and even bank microfilm copies of cashier's checks, and because of the availability of many of the principals to testify, the Special Commission was able to investigate this particular history in considerable detail.

However, this report cannot necessarily be considered the complete story of the award of the contract. The Commission was constrained by limitations of time and hampered by the complete refusal of the DMJM firm to make any of its records available for review or to have any of its principals give testimony. Such a total lack of cooperation with an agency of the Commonwealth is intolerable. The DMJM firm has earned almost \$2 million on this project. There is no reason why

it should not account to the Legislature of Massachusetts for what it did with that money.

Nevertheless, the Commission heard enough evidence about this contract to conclude that what happened here is far from unique. It is only one example of a system of corruption and political favoritism that has pervaded the Commonwealth's awarding of architectural contracts. Because this case revealed a pattern -- because it is typical, not isolated -- the Commission heard evidence about it at considerable length.

Many of the elements of the pattern became clear during those hearings. "Bribes" and "payoffs" are known as "political contributions." In fact, it may well have been the constant financial pressures of political campaigning, rather than private greed, that created a system in which the most important public contracts were for sale to the highest contributor, not the most skilled professional.

The system also bestowed tremendous governmental power on people like Albert Manzi because they could do one thing -- raise money. It didn't matter how they did it. The evidence before the Commission suggests that someone had to fill Manzi's role so that high elected officials themselves could be shielded from direct involvement in bribery and extortion. For that reason, the affairs of Massachusetts government were decided in the back room of a Worcester meat market as well as in the State House.

Accomplished actors in this system knew its unwritten rules. All payments in cash. No money up front. Payments in installments, only upon receipt of fee payments from the Commonwealth, and then only in proportion to the value of the contract, usually between five and ten percent. Elaborate schemes to circumvent the laws limiting campaign contributions and requiring record-keeping and reporting, including the use of cashier's checks, false names, and the diversion of cash completely out of the reporting system.

The Commission would never have been able to uncover so much about this system without a major investment of time and investigative resources. In particular, had the Commission not been able to apply to the courts to grant immunity from prosecution to witnesses, the Commission would never have heard the testimony crucial to its understanding of this case.

The new campus of Holyoke Community College is, overall, a well-designed and well-constructed project. Daniel, Mann, Johnson, Mendenhall received an award from the American Institute of Architects for its work on the project. But the high quality of this project was accidental. In a system in which contracts can be purchased by an architect willing to do so, the Commonwealth has little control over the quality of its buildings. More often than not, as other

investigations by the Special Commission revealed, it will end up with shoddy ones.

"If a hand is open, someone will find a way to fill that hand for something in return."
--William V. Masiello

Other chapters of this report have given many examples of whose hands were open and of who--and what--filled them. The name of William V. Masiello is a common denominator running through these accounts, and this section will focus on him: his testimony about his own corruption of the state and county design contract award system; his success in winning public contracts for his firm and others; his methods of generating the cash he spent liberally on elected officials and public employees. This section will also tell in detail the stories of the major architectural contracts awarded to the Masiello firm during the 1960s and 1970s. These stories together demonstrate how, in return for campaign contributions and cash payoffs, free meals and entertainment, free travel and design services, gifts and tickets to sports events, one firm secured 132 state and county design contract awards and over \$5,000,000 in fees from public agencies.¹

Other sections of this report tell related stories. In the McKee-Berger-Mansueto case the Special Commission heard evidence of bribery, extortion, perjury, obstruction of justice, and manipulation of the legislative and judicial processes for private gain. In studying the award of design contracts by the Office of Administration & Finance the Commission witnessed the systematic use of discretionary power by appointed officials to bestow state contracts as political favors. In the Daniel, Mann, Johnson, Mendenhall investigation the Commission uncovered the system of personal contacts, political contributions, and subversion of the theoretically corruption-proof Designer Selection Board process that enabled that California firm to land the contract to design Holyoke Community College.

Masiello & Associates, like MBM, A&F, and DMJM, ranked high from the start on the Special Commission's list of candidates for investigation. Public records divulged a disproportionate number of contracts awarded to the firm over a limited span of years and an enormous number of dollars appropriated for those projects. Public records also showed the firm's name repeatedly coupled with the same consultants and suppliers, and with the same local and state officials and political figures. When the Special Commission began looking more closely into the firm's affairs, another major criterion for a full investigation appeared: the principals had withdrawn from the firm's accounts extremely large amounts of unaccounted-for cash. In every way, Masiello & Associates was a prime target for study.

This introductory section is in four parts: (1) a profile of William Masiello, starting from his own statement of his view of corruption and its causes and going on to look at his techniques for what he called "public relations"; (2) an overview of the Masiello firm's success in winning design contracts during the period within the Special Commission's mandate; (3) a brief account of the Special Commission's investigative procedure in this case; and (4) a review of the Masiello firm's techniques and volume of cash generation as a background to the specifics of cash generation for payoffs and political contributions in the individual case histories of corruption throughout the remainder of this chapter.

THE MASIELLO STRATEGY: FILLING THE OPEN HAND

On May 12 through May 14, 1980, William V. Masiello, former owner and treasurer of the firm of Masiello & Associates, testified publicly before the Special Commission. He began his testimony with this statement:

Over the past two months, I have sat back, watched and listened, while my activities and the activities of others concerning state and county contracts have been the subject of these public hearings.

This was not an entirely new experience for me as my and the company's activities have been the source of considerable comment and extensive investigation for several years now.

I am now here before you. For the record, I did not invite myself here, nor, with all due respect to the Commission, am I particularly happy to be here. I am here under summons. I am here because of a court order which requires me to "give testimony and produce evidence." I will comply with that order, and I intend to testify truthfully.

However, prior to my testimony there are certain matters that I would like to state for the record of these proceedings.

The first is to clarify my position as to how I got here and why I am testifying. I am here because I have been granted immunity by the United States District Court and by the Supreme Judicial Court of this Commonwealth. Contrary to what has been speculated, I did not request immunity nor at any time did I authorize anyone to negotiate on my behalf for immunity, as I am told is common in these situations.

I am testifying because of the choices available to me. I have been placed in the situation of either complying with the court order or being held in contempt of court and incarcerated. I have decided to comply with the court order.

Secondly, I would like to clarify my intentions in this matter. I am not here to make anyone look bad, nor is it my intention to blame anyone. Too much of that has gone on already. I am here to describe the system as I knew it and to describe how I operated within it.

As far as my personal actions, I have already admitted to you in the course of the private hearings and meetings that I have bribed public officials for state and local contracts, rigged bids, committed perjury in other proceedings and engaged in various other criminal and/or wrongful activities.

For all of these I have paid a price--a price that I might add has been and continues to be a steep one. However, I do not blame anyone for my past and present difficulties. I accept total responsibility for my actions.

With respect to my activities, I ask that my actions be evaluated for what they were--I was not a victim. I was fully aware at the time that these acts were committed that they were wrong. It is also my position that, contrary to what you have heard, I did not have to twist any arms. As far as I am concerned, everyone, and I emphasize everyone who was involved did so knowingly and willingly. The problem is that we got caught and some are now expressing themselves as victims rather than the active participants that we all were.

I simply operated within the system that was in existence in Massachusetts during that period of time. I did not invent the system, nor am I naive enough to believe that it ended when I went out of business. As I knew it, there were basically two groups of people who operated within the system. In one group were businessmen such as me who were looking for the "edge" in getting business with the state. The other group was comprised of various levels of public officials who had their hands out for one reason or another.

The end result was the system that I came to know and operate within. Perhaps at its worst, the system resulted in contracts which were actually bought. However, in my experience, although this did occur, it did not occur often.

What did occur was far more subtle. Simplifying it a bit, I would merely buy a ticket for access to the inside and then I could generally take it from there without the public official even being aware of it, although by that time, I had actually neutralized any effective monitoring of the contract through my various contributions and contacts throughout the political system. In any event, as far as I am concerned, in money terms, once I had gained access and neutralized any scrutiny, that's when most of the corruption took place and it took place between me and the various contractors and subcontractors.

This was the system that I knew and operated within. I make no attempt to defend it or my actions, nor do I intend to blame the various public officials who accepted contributions and other favors for one reason or another, although, in my opinion, that is the heart of the problem. If a hand is open, someone will find a way to fill that hand for something in return, whether it be access or whatever, and the public will pay. If the hand is closed, the game is over before it begins.

I refuse to blame the public officials for this problem because the reasons why contributions are sought and accepted are far more complex than may first appear. At first glance, it may appear that they are sought only because the individuals involved are indeed corrupt, and in some cases that is true.

However, when you analyze this problem more carefully, it is not fair to blame this entirely on the politicians, for in my opinion, there are some very serious flaws in the way we elect and re-elect people in this state, starting with the enormous amounts of money it costs to run for office.

Why do political campaigns cost so much? Why are they so long? What is the money being used for? Who really benefits from the present system? Isn't there a better way of doing it so at least those politicians who are trying to be honest, and they do exist despite what you may think, don't have to demean themselves by constantly having to ask for money.

I realize that some politicians will abuse any system, but in my opinion, these are the questions that are going to have to be answered before the problem is solved.

In any event, you as the Commission were established to investigate and study as a basis for legislative action the existence and extent of corrupt practices and maladministration concerning these contracts.

For the record, not only for the public but for the legislature as well, as far as I am concerned, you've proven ten times over the case against me and the need for either change or more strict enforcement.

We now enter another round of inquiry concerning me. For those who expect my testimony to reflect the so-called "fused grenade" characterization that has followed me for the past several years, I hope that you will be disappointed. However, for those of you who have any doubt that there are serious and perhaps fundamental problems that are involved here, just listen.²

Following this opening statement William Masiello testified for the rest of that day and for two more days. Earlier in the month the Special Commission had heard testimony from Audrey Rawson, an employee of the Masiello firm from 1963 through 1978,³ who became corporate clerk in 1969 and took over the bookkeeping and payroll in 1972.⁴ Rawson and Masiello both amplified what Masiello was referring to in his opening statement with the words, "I would merely buy a ticket for access to the inside and then I could generally take it from there without the public official even being aware of it although by that time I had actually neutralized any effective monitoring of the contract through my various contributions and contacts throughout the political system."⁵ The testimony of Rawson and Masiello explained in detail the different ways in which Masiello made those "contributions and contacts" to further his firm's business.

Masiello's Background

William V. Masiello came to his position as treasurer and owner of Masiello & Associates from a background that was neither financial nor architectural. After graduating from Worcester Commerce High School he worked as a copy boy and printer from 1948 to 1963.⁶ In 1963 he went to work for his brother Frank R. Masiello, Jr., an architect who was then the head of the firm called Frank R. Masiello & Associates. In 1968 Frank Masiello moved to Florida; in 1969 he sold the stock of the corporation to Kassuba Development Corp. of Palm Beach; in 1972 Kassuba sold the stock back to Frank Masiello, who ten months later re-sold the company to his brother William.⁷

During these years William Masiello gradually took on more and more responsibility for the firm's financial affairs. He testified that, being a printer by trade,

When I first went to work for Frank I originally started off to print the brochures for the corporation.... In 1963 when I first arrived ... the corporation was in serious financial difficulty. Unbeknownst to me, there was no bookkeeper that worked there, and there were serious financial problems with the corporation. It was at the request of the accountant that Frank had somebody close to him to handle the corporation.... I was then put on as bookkeeper.⁸

He continued to do the bookkeeping until 1968, but when Frank Masiello moved to Florida, as Audrey Rawson put it, "Bill was in charge of the office. He left the

architectural end of the firm to whoever was the chief architect at the time. But, he did watch over all the finances -- took care of the financial records."⁹ Masiello said, "I took up a more public relations approach to the corporation as opposed to bookkeeping ... generally entertaining ... looking for new work, that type of operation."¹⁰

The Public Relations Approach

Being in the position of overseeing the business of the firm, William Masiello did the job in the way that was natural to him. As he characterized his own personality: "I consider myself to be a very generous fellow inasmuch as when I do go out and I am sure the people in this room have witnessed it, that I am over eager to pick up any checks. Sometimes I wish I knew how to keep my hands in my pockets."¹¹ Masiello's description of himself as "generous" seemed accurate, as previous testimony before the Special Commission, and the Commission's own research, had disclosed the large amounts of money spent by the firm through charge accounts and credit cards, and through checks cashed and used for contributions and entertainment.

Cash generation (described in more detail below and in a later section of this report) was one manifestation of William Masiello's generosity. Whether transmitted in the form of a political contribution, a bribe or a kickback, cash was the ultimate door opener, and it bought many of the contracts discussed in this chapter.

The more subtle way to buy access and contracts and to "neutralize any effective monitoring" was through various favors and entertainment. Audrey Rawson outlined Masiello's entertainment philosophy in her testimony:

He [Masiello] was out of the office a good part of the time, and he was wining and dining and playing golf and taking care of the PR end of the firm.... He was entertaining public officials and anybody that he thought he may be able to acquire some contracts for the firm with.... People within the different agencies that he was--we were dealing with. Senator Kelly [Chairman of the Massachusetts Senate Ways and Means Committee] he was with a good part of the time, Charlie Kougeas [a lobbyist for the Boston Redevelopment Authority]. Anybody within a housing authority or a state, anybody he felt he may be able to do him some good as far as getting a contract.¹²

Further explaining his philosophy, Masiello stated that he regarded many of his business contacts as friends.

I did it for friends. That is the point I am trying to bring out. I did it for friends as well as public officials. I didn't draw the distinction....¹³

One of the ways that I did, let's say, make friends with politicians were to take them out, wine them, dine them, etc. It was a good practice and I felt it was beneficial to public relations of Masiello & Associates.¹⁴

The result was a continuous outpouring of meals, drinks, money, golf and handball games, free trips, free architectural services, tickets to sporting events, and endless personal favors for hundreds of people within state and county governments and public agencies.¹⁵

Wining and Dining

What emerged in the Commission's scrutiny of the expense vouchers and receipts of the Masiello firm was a pattern of lavish entertainment that William Masiello referred to in his testimony as "wining and dining,"¹⁶ the "legwork"¹⁷ he did to secure contracts for the firm. The many varieties of this "legwork" are discussed in detail in a later section of this chapter.

Throughout the early and middle 1970s a steady flow of meals, drinks, gifts, architectural work, Christmas remembrances, trips, and tickets to sports events also helped keep agencies' doors open to the Masiello firm. Discovered by the Commission's investigators in the firm's records, and described by Masiello and Rawson in their testimony, these gifts and favors went to local redevelopment officials, county commissioners, lobbyists, DCA and BBC and housing authority personnel, state legislators and their aides.¹⁸ The upshot was that the name of Masiello was always present in the minds of these officials; and their urge to exercise hard-nosed supervision of Masiello's operations was reduced to virtually nothing.

All this entertainment and all these gifts, services, trips, and cash donations were, as the following pages will demonstrate, effective in realizing their purpose: to enable the Masiello firm to obtain such a large number of state and local building design contracts that the firm subsisted almost entirely on public work throughout its business existence.

MASIELLO'S RECORD OF OBTAINING STATE AND COUNTY PROJECTS

Brief History of the Firm

The firm which became Masiello & Associates was first incorporated as Roger Garland & Associates in Worcester, Mass., in May of 1955. At that time the president of the firm was Frank R. Masiello but the stock was controlled by Garland. In 1958 Frank Masiello bought Garland out and renamed the firm Frank R. Masiello & Associates; he kept the offices of the firm in Worcester. Frank Masiello was joined by Edward Healy in 1965, and changed the firm's name to Masiello & Healy, Architects, Inc. In 1968 Healy left the firm and Frank Masiello changed the name once more, this time to Masiello & Associates, Architects, Inc. Meanwhile, he had opened offices in Lanham, Maryland and in

Palm Beach, Florida.

In 1969 the stock of the firm was sold to Kassuba Development Corp. of Palm Beach. Under Kassuba, the Worcester and Florida offices continued to function, although in 1971 the Maryland office closed. In February, 1972 Frank Masiello bought his firm's stock back from Kassuba; in December of that same year he sold it to his brother, William, who had held increasingly responsible positions in the firm since 1963.¹⁹ (Frank Masiello began a new firm of his own in Florida in 1972, under the name of Frank R. Masiello & Associates.)²⁰

During the year 1972, the firm's Worcester home office moved from 791 Main Street to the Mechanics National Tower, also on Main Street but closer to Worcester Center. Under William Masiello's management the firm moved again in mid-1975 to a renovated mansion on Elm Street, Worcester. Two years later came the final name change, when after unfavorable publicity in the federal DiCarlo-MacKenzie trial, William Masiello renamed the corporation Elm Park Associates.

Public Architecture the Main Work of the Firm

During the period 1958 to 1978 the Masiello firm obtained 132 state and county design contracts. The total estimated fees paid to Masiello & Associates (under its various names) by state and county governments added up to \$5,463,286.²¹ This figure is necessarily estimated because the Commission found the Masiello firm's records incomplete; the applicable records of agencies of state, county and local government were also incomplete.

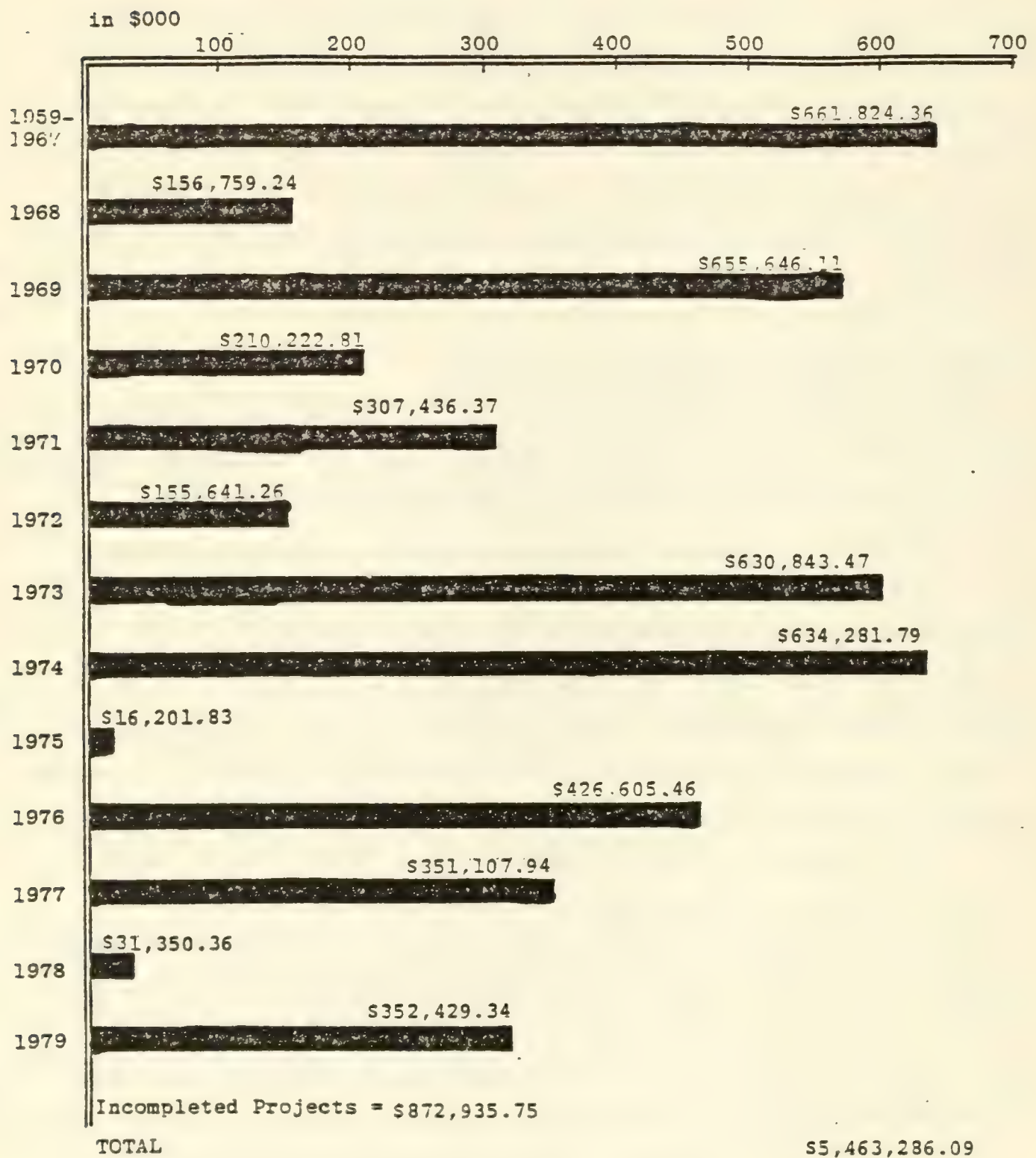
The graph below summarizes total design fees and reimbursables paid to the Masiello firm on Massachusetts state and county projects, grouped into the years of final acceptance of projects by the commissioning agencies.^{22*} This graph indicates two basic things: first, that the firm had at all times some state and/or county projects under way, representing a steady flow of income from public sources; and second, that the great bulk of fees received by the firm over its 25-year life span were on public projects on which construction began after January 1, 1968: i.e., within the time the Special Commission was mandated to study. In fact, the fees indicated for the 1959-1967 period are somewhat too low, because records are missing for projects executed during those years.²³ On the other hand, later fees would have been even higher than shown here if so many projects had not gone unfinished. Some became inactive for lack of funds or

*To compute fees according to the years in which they were actually paid, rather than according to years in which projects were accepted, would have required too complex and time-consuming a process to be worthwhile in terms of the overall view the Special Commission was seeking.

for other reasons (such as changes in policy respecting the project in question); the firm's remaining state contracts were cancelled by the Dukakis administration in 1978.

Table I²⁴

TOTAL DESIGN FEES PAID TO MASIELLO & ASSOCIATES
ON MASSACHUSETTS STATE AND COUNTY CONTRACTS*



* Fees have been calculated as of the year of final acceptance of the project by the public agency.

Table II details the agencies, the number of contracts per agency, and the fees paid to Masiello that generated the \$5-million total. The last column shows the final (or estimated, in the case of projects that were never completed) total cost of the construction of the projects. This column represents a contemplated expenditure of public funds of nearly \$131 million over the 10-year period covered.²⁵

Table II²⁶

MASSACHUSETTS STATE AND COUNTY CONTRACTS TO MASIELLO & ASSOCIATES, 1959 - 1979 (by agency)

Agency	Number of Contracts	Total Fees Paid	Total Cost of projects*
Armory Commission	16	\$ 213,035.58	\$ 5,086,302.02
State Colleges	7	\$ 40,100.83	\$ 430,199.59
Department of Public Health	8	\$ 108,147.14	\$ 1,164,699.31
Department of Mental Health	20	\$ 1,144,538.54	\$ 37,120,913.97
Department of Correction	39	\$ 1,581,875.42	\$ 29,965,663.99
Department of Youth Services	2	\$ 39,560.77	\$ 1,488,008.81
Suffolk County	4	\$ 371,403.61	\$ 17,012,738.61
Worcester County	10	\$ 893,068.68	\$ 14,101,735.05
Metropolitan District Commission	3	\$ 36,000.00	\$ 546,883.86
Local Housing Authorities	23	\$ 1,035,555.52	\$ 23,930,431.04
TOTAL	132	\$ 5,463,286.09	\$130,847,576.25

* Final total project cost or estimated project cost for incompletd projects

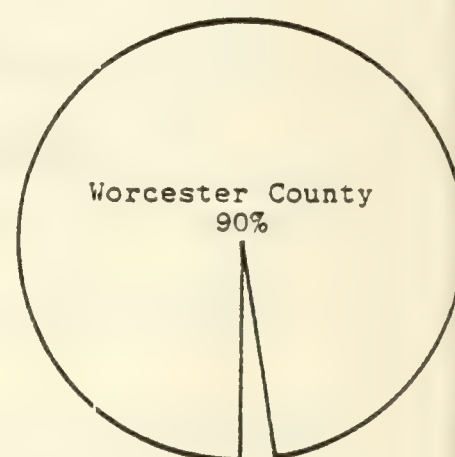
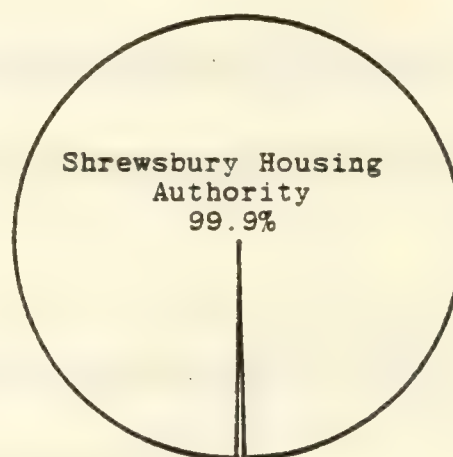
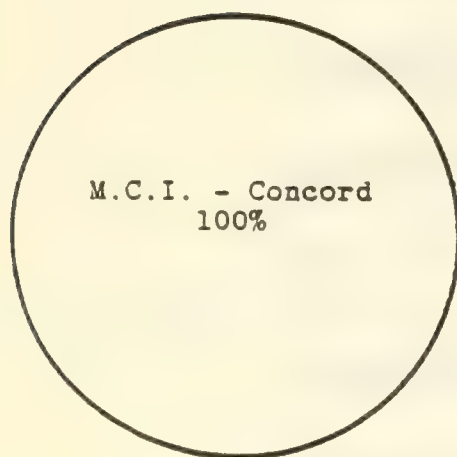
The raw totals represented by Table II above are suggestive enough, especially in the context of the "public relations" strategy outlined by William Masiello and detailed in the preceding pages. But seen as a fraction of total costs of all construction by three public agencies, the figures come into sharper focus. The Masiello firm's relationships with the three agencies designated in Table III below (MCI-Concord, the Shrewsbury Housing Authority, and Worcester County) will all be discussed in detail in sections to follow. But this graph

reveals that Masiello virtually monopolized access to contracts awarded by these three agencies from the mid-1960s to the late 1970s.²⁷

Table III²⁸

TOTAL COST OF MASIELLO & ASSOCIATES DESIGNED PROJECTS AS A PERCENTAGE
OF TOTAL COST OF ALL CONSTRUCTION BY THREE PUBLIC AGENCIES IN MASSACHUSETTS

Agency	Number of Contracts	%	Total Cost of Projects Designed by Masiello & Associates	Total Cost of Construction by Agency
Department of Correction M.C.I. - Concord 1961 - 1977	36 of 36	100%	\$18,782,505.37	of \$18,782,505.37
Shrewsbury Housing Authority 1969 - 1976	4 of 5	99.9%	\$ 4,074,083.80	of \$ 4,079,336.80
Worcester County 1965 - 1977	9 of 13	90%	\$14,101,735.05	of \$15,640,207.05



The phrase "total cost" used in the two preceding exhibits includes available data on designer's fees and reimbursables as well as the construction contract price, net change orders, testing, soil exploration, clerk of the works' salary, etc.: everything that the Commonwealth, county, or locality paid to get the building from appropriation to acceptance.²⁹ In the case of projects designed but never built, "total cost" includes the fees actually paid, plus the estimated

final cost of construction of the project if it had been finished.³⁰ It is possible that there were additional costs not reflected in records the Commission found.

Not only did the Masiello firm manage to obtain a large share of available public contracts during its business life, but the vast majority of man-hours of work produced by Masiello personnel during the years the Special Commission studied were spent on public projects.* The Special Commission analyzed work-in-progress records of the firm for 1972-1977 (the only years for which complete records were available) and computed work hours charged to specific projects only, not hours charged to administration or general overhead. Of those hours, 95.4 per cent went to public projects; just 4.6 per cent were spent on private projects. To put it another way, of 115,000 hours, over 110,000 were spent on public projects. For all practical purposes the firm's livelihood was public work.³¹

There have been repeated references in the preceding paragraphs to unfinished or incomplete projects. Later in this chapter of the report some examples of contracts awarded for design of projects that would never be built will be discussed; most prominent among these are the Springfield Mental Health Center; the Joseph P. Gentile School in Springfield; and the maximum security block at MCI-Concord--all state contracts. The table below gives the full listing of state and county projects which were designed by Masiello but never built. The total design fees paid to the firm added up to \$872,935.75 for contracts that will never result in finished buildings.³²

It is strikingly clear from the data in the graphs and tables above that the Masiello firm did have substantial success in securing public design work. The chart below (Table V) affords some indications of the way Masiello worked around the Designer Selection Board system, which was designed to produce reform, and continued to obtain work through influence and "public relations" efforts. The horizontal axis is chronological and embraces all the years of the firm's active life. The top half of the vertical axis lists the state agencies for which the contract award process was administered by the BBC.

In the lower half of that axis are county and local authorities and two special categories: "continued services" and "BBC authority waived." The continued services contracts (under which a firm continues to receive all contracts on a given project, subsequent to its receiving the initial design

*Public, in this context, means any contract awarded by the federal government or by any state or local government or any housing authority, redevelopment authority, school board, or other public agency.

Table IV³³

MASSACHUSETTS STATE AND COUNTY PROJECTS WHICH WERE DESIGNED
BY MASIELLO & ASSOCIATES BUT WERE NOT CONSTRUCTED

Contract Number	Description	Design Contract Award Date	Total Design Fees	Estimated Total Project Cost
M 64-14 #1	Springfield Mental Health Center and Satellites	11/11/74	\$ 88,085.00	\$ 4,778,767.08
M 64-14 #2		Unknown	\$ 6,228.07	
M 64-14 #3		Unknown	\$ 6,397.01	
M 67-10	Springfield, Joseph P. Gentile School	5/5/67	\$ 72,129.64	\$16,072,129.64
P 61-1 #4A	MCI-Concord, J Building	ca. 1966	\$133,649.45	\$ 3,173,900.81
P 61-1 #9D	MCI-Concord, Farm Buildings	Unknown	\$ 58,304.01	\$ 1,164,022.10
P 62-1 #10	MCI-Concord, Addition to Furniture Plant	12/9/71	\$ 5,982.55	\$ 429,382.58
P 61-1 #11	MCI-Concord, Segregation and Adjustment Unit	1/16/73	\$ 28,640.74	\$ 3,068,892.10
P 61-1 #12A	MCI-Concord: Demolition	11/16/71	None Paid	\$ 1,665,124.00
P 61-1 #12B	Periphery Wall Lighting	12/1/71	\$ 65,884.00	
P 61-1 #12C	Sally Port	11/16/71	None Paid	
P 61-1 #12D	Vehicle Garage	12/1/71	\$ 3,802.50	
P 61-1 #12E	Employee Parking	11/16/71	\$ 1,687.50	
P 61-1 #12F	Temporary Guard Towers	11/16/71	None Paid	
P 74-6 #1A	MCI-Concord, Renovations: A Building	3/9/76	\$ 630.82	\$ 1,051,496.92
P 74-6 #1B	B Building	3/9/76	\$ 333.70	
P 74-6 #1C	C Building	3/9/76	\$ 6,337.40	
P 74-6 #1D	D Building	3/9/76	\$ 26,195.00	
P 76-5 #1	MCI-Concord, Perimeter Wall	6/14/77	\$ 25,620.00	\$ 782,620.00
Y 66-2	Boston, Addition to Judge Connelly Youth Center	2/9/66	\$ 30,767.78	\$ 1,380,767.78
SC-1962	Charles Street Jail	7/75	\$157,855.14	\$16,036,534.86
SC-2421	Deer Island	12/73	\$152,341.72	
Milbury Hsng. Auth. 667-2	Stone Retaining Wall	Unknown	\$ 2,060.72	\$ 2,060.72
TOTAL	23 CONTRACTS		\$872,935.75	\$49,608,698.56

contract) are authorized by the BBC with the right of approval by the Secretary of Administration and Finance. On these continued service contracts the Designer Selection Board's authority does not apply, and no advertising or open application takes place: the award is given strictly at the initiative of the commissioning agency or of the BBC.³⁴ The other special category, "BBC authority waived" contracts, refers to situations where the using agency itself requests and gets authorization to administer the contract.³⁵

The impact of the Designer Selection Board upon the operations of Masiello & Associates is the salient point of this chart. The vertical break between 1966 and 1967 indicates the date of the founding of the DSB. Before 1967, the Secretary of Administration & Finance authorized the selection of designers for state projects. From 1967 onwards, however, the DSB pre-screened applicants for contracts and submitted only a group of three finalists to the office of A&F.³⁶

[illegible][illegible]

This chart indicates that--at the outset, at least--the establishment of the Designer Selection Board achieved its aim: it made screening of designers a more objective process, and removed the award of design contracts from the sole control of one individual (the Commissioner of A&F). It didn't take long for people who wanted access to state contracts to figure out a way to circumvent the DSB procedure, as later sections will explain. But at the beginning, the removal of complete discretion from the office of A&F forced firms like Masiello's to turn their attention to other authorities where awards were still subject to personal discretion and therefore to personal influence: the counties (Worcester County continued to award its own contracts until 1972), the local housing authorities, the MDC.

Masiello also began to rely heavily, as shown in the lower right-hand quadrant of Table V, on continued services contracts on preexisting projects. These were awarded by using agencies and/or the BBC with the approval of the Secretary of A&F but without the input of the DSB. As of 1972, the counties came under the supervision of the DSB, with the exception of Suffolk County, which continued after 1972 to be a source of contracts for Masiello.³⁸

The information on contract awards, which is given here in condensed form, led the Special Commission to conclude that the entertainment, gifts, money, and favors dispensed by the Masiello firm were, to use William Masiello's words, "beneficial"³⁹ in "opening doors"⁴⁰ to profitable business with public agencies. The Commission went on to investigate the methods of cash generation involved in making Masiello's "public relations" efforts both so successful and so difficult to document.

THE INVESTIGATION

The Special Commission's investigation of the Masiello firm had two main components: detailed review of the records of the firm itself and public records of the firm's activities; and interviews of individuals related to the firm or the public agencies which awarded contracts to the firm.

First, the Commission's investigators made an exhaustive search for the Masiello firm's records. Some records were turned over to the Commission by other investigative agencies; the balance was obtained by summons from the firm's employees, banks, accountants, and storage facilities. As they were obtained, financial records were referred to financial specialists for auditing to identify income and cash generation; contract and project records were collated into chronologies; and travel and expense records were computerized by date, names, location and amounts spent.

The audits concentrated on finding evidence of the withdrawal of cash from the accounts of the firm with which its principals could make illegal payments. The one common denominator which appeared in the Commission's investigations was the use of cash in virtually all corrupt payments related to contract awards. When found, instances of cash generation were reviewed for possible correlation with contract awards or the receipt of fees from public agencies, and for tax or other violations apparent on the face of the books. All of this analysis, when completed and collated, presented a detailed picture of the activities of the Masiello firm over a ten-year period.

Other sources of information were the records of the BBC, the DSB, Worcester and Suffolk Counties, several local housing authorities, the MDC, and the State Comptroller's office. It took approximately 300 man-hours of work by the Commission's staff to compile the data on the Masiello firm's contracts that these sources provided, largely because of confusion, omissions, duplications, and decentralization among state and local agencies.*

While the documentary research was being performed, interviewers attempted to identify and locate all former employees of the Masiello firm. These individuals were interviewed to establish their roles in the firm, the firm's procedures, and the extent of their knowledge of possible corrupt activity, particularly cash generation. When the documentary research reached an advanced stage, some employees were re-interviewed because the documents suggested they had more extensive knowledge than they initially remembered or disclosed, or because the documentary evidence contradicted information they had given. Documents served to refresh the recollection of cooperative witnesses, and to convince uncooperative witnesses that they had to be more forthcoming because the Commission had concrete evidence of their involvement.

Employees who appeared as payees or endorsers of checks that were cashed were shown such checks and questioned closely about their disposition. In many cases this led to the discovery of false loan accounts or phony travel expenses and bonuses. In the first significant break in this investigation, a Commission interviewer pressed a former Masiello employee, John Wackell, about cashing checks. He finally remembered an incident in which Raymond Allard, another employee, showed him \$3,000 in cash in an envelope and said it was a "Christmas bonus" for a local housing authority member. That information, along with the check used to generate that cash, enabled the Commission to question Allard and get him to admit his involvement in this and other actual corrupt practices.

*This subject will be explored further in the chapter of this report on "Systems Issues and Findings," specifically in the section on information management.

Allard's testimony, in turn, gave the Commission enough "ammunition" so that it could safely apply for a grant of immunity for William Masiello -- knowing that by then its investigators had enough evidence that if Masiello lied under immunity, he could be caught and prosecuted for perjury.

That method of working "up the ladder" from a small shred of evidence of corruption characterized all the Commission's investigations and exemplifies the painstaking work required to uncover cases of political corruption. The same evidence also enabled the Commission to confront the public officials who allegedly received and shared the payment in return for awarding a contract. The entire episode is described in detail in a later section of this report on the Shrewsbury Housing Authority.

While employees of the Masiello firm were being sought out, investigators also identified and contacted officials and employees of the public agencies involved in the contracts under investigation, using similar techniques to fill in documentary gaps and discover what transpired on the governmental end during the contract award and performance process.

This process often produced leads which involved other groups of people with business relationships to the Masiello firm -- consultants, vendors, contractors -- so that interviewing and auditing were conducted in tiers. First, employees, then consultants, then vendors and contractors; when necessary, records of these individuals or firms were also summoned and audited, followed by the same procedures described above to fill in the evidence.

Finally, the full story gradually was seen to devolve upon relatively few individuals: those main actors responsible for the conduct of the private firms and the public agencies brought together in the contracts--and payments--under investigation. Many of these had already been interviewed or summoned to testify in private hearings as part of the general investigation. Because of their potential liability for illegal actions, most of these individuals had either lied or invoked their constitutional privileges against self-incrimination and refused to testify. When the investigation reached the advanced stage, they were asked or summoned to testify under oath. Those who previously had apparently lied were apprised of their potential liability for perjury and some subsequently cooperated. Of those who had refused to give any information or testimony because of possible self-incrimination, several were given immunity from prosecution and ordered to testify.

Frank and William Masiello were most prominent among those who were immunized. The lengthy interviews and testimony which followed showed that they were accomplished in the art of influencing public officials to serve their own ends, and detailed the specific patterns of corruption in Massachusetts. Whether

the corruption was through ingratiation, influence, or outright bribery, it was most often accomplished by the use of cash, transmitted by the Masiello brothers or at their direction.

CASH GENERATION

William Masiello believed in cash. In private interviews with Special Commission staff members he said:

I've never met a politician with enough cash. All politicians need cash.⁴¹

Always give cash--it's the easiest thing and they always take it.⁴²

Give it in cash--they'll remember you. Checks? Just another piece of paper.⁴³

He believed in cash, and he used it to advantage to ease the way to contracts for his firm throughout the years of his management of Masiello & Associates. How he got the cash, and how he spent it, was the subject of careful study by the Special Commission.

The "paper trail" created by normal business practices establishes a record for anyone trying to find out what a firm has been doing with its money. Cancelled checks, bank statements, ledgers, journal entries, appointment calendars, accountants' work papers -- all can be used to document legitimate business transactions. For illegitimate practices, on the other hand, cash leaves little trail behind. Even cash generation leaves indications in those records, however, which may help to establish a history of corrupt practices. For that reason the Special Commission went to great lengths to unravel the events connected with the cases of cash generation its research uncovered. A huge amount of cash was generated by the Masiello firm in the 1973-1977 period; and in the case of Masiello, as in so many others, the existence of cash generation did in fact provide a clue to the existence of illegal practices by the firm, a link in the chain of evidence leading at least part of the way to the corrupt officials who took the money.

By the time Audrey Rawson testified in May of 1980 before the Special Commission, the Commission's staff had already audited all available records of the firm and had prepared a series of schedules summarizing cash generation in the years 1973-1977. Rawson summarized the facts represented by the schedules: "There was a generation from the year 1973 through 1977, there were total checks in the amount of 227 checks, and the total funds for that was \$108,154.97."⁴⁴ She also testified that the total--\$108,154.97--represents only cash raised by the cashing of corporate checks. She stated that it did not include kickbacks from suppliers or campaign contributions by suppliers, consultants, or other

SCHEDULE 11

GENERATION OF CASH BY ISSUANCE OF CORPORATE CHECKS

RE: MASIELLO AND ASSOCIATES, ARCHITECTS, INC.

		<u>1973</u>		<u>1974</u>		<u>1975</u>		<u>1976</u>		<u>1977</u>	
	<u>Total</u>	<u>Total</u>	<u>Total</u>	<u>Total</u>	<u>Total</u>	<u>Total</u>	<u>Total</u>	<u>Total</u>	<u>Total</u>	<u>Total</u>	<u>Total</u>
	<u>Checks</u>	<u>Funds</u>	<u>Checks</u>	<u>Funds</u>	<u>Checks</u>	<u>Funds</u>	<u>Checks</u>	<u>Funds</u>	<u>Checks</u>	<u>Funds</u>	<u>Funds</u>
I. <u>For Large</u>											
<u>Expenditures -</u>											
Sch. A	13	9,419.94	15	10,912.14	28	26,148.22	0	0	0	0	
			Sch. D		Sch. G						
II. <u>For Other</u>											
<u>Expenditures -</u>											
Sch. B	25	6,575.42	24	4,153.17	28	5,346.95	43	11,276.60	38	6,622.53	
			Sch. E		Sch. H		Sch. J		Sch. L		
III. <u>For Particular</u>											
<u>Expenditures -</u>											
Sch. C	3	10,500.00	5	4,000.00	2	8,000.00	3	5,200.00	0	0	
			Sch. F		Sch. I		Sch. K				
<u>TOTAL CASH GENERATION</u>											
<u>BY CORPORATE CHECKS -</u>	41	26,495.36	44	19,065.31	58	39,495.17	46	16,476.60	38	6,622.53	

business contacts that passed through the hands of William Masiello en route to their ultimate recipients without ever being entered in the Masiello & Associates books at all. (Case histories of cash generation and kickbacks by suppliers and consultants appear in Volume 5 of this Report.)

Rawson also gave testimony about the cash generation procedures commonly followed by the Masiello firm. Among the methods:

(1) Through employees: the firm would pay a "bonus" chargeable to payroll; the employee would cash the check, keep a small amount of money (to pay added taxes incurred because of the additional income reflected on the payroll records), and return the rest of the cash to William Masiello.⁴⁶

(2) Through Audrey Rawson herself, who at a phone call from William Masiello would draw and sign a check, endorse and cash it, put the money in a plain white envelope and have it delivered to wherever Masiello was, in care of whatever member of the firm might be going that way. She testified that "Bill always liked hundred dollar bills rather than tens and twenties."⁴⁷

(3) Through suppliers, consultants, and other parties with whom the firm did business. William Masiello testified on his methods of raising cash through rigged bidding and kickbacks,⁴⁸ and these methods are explored further in the specific case histories which follow.

(4) Through "laundered" checks, made payable to other parties and cashed by

them. The laundering scheme Masiello and his engineering consultant Charles Theodore worked out is described below. The laundered cash ended up in the hands of William Masiello.⁴⁹

(5) Through "loans" or "payroll" checks made payable to William Masiello himself and cashed by either Audrey Rawson or Masiello. When Rawson cashed the checks, she turned the money over to Masiello.⁵⁰

When corporate checks were cashed--by Audrey Rawson, by other employees, or by Masiello himself--they had to be charged against one corporate account or another. Most frequently they were charged to Masiello's "travel and entertainment" expenses. Often they were charged to "payroll" and made payable to William V. Masiello (or, infrequently, to Audrey Rawson). Occasionally they were charged to "employee loans" (but not loaned to employees) or to "engineering" (but not paid to engineers) or to "auto expense" (but not turned over to repair shops). A few checks were not recorded under any account. And one check was listed, factually enough, under "donations--contribution to J. Kelly."

The variety of accounting justifications for the checks to be cashed by the Masiello firm is typical of the cash generation patterns observed in many firms by the Special Commission's investigators. Also typical of these patterns were the round dollar amounts of the Masiello firm's cash generation checks. The vast majority of the 227 checks in the period studied were amounts from \$100 or \$300 up to \$1000 or \$2000. The exceptions tended to be "payroll" checks made payable to William Masiello and endorsed either by Masiello or by both Masiello and Rawson, and cashed.⁵¹

Another pattern the Commission found to be common in cases of cash generation was the "laundering" of money through a cooperative third party. This method, too, prevailed in the Masiello case. Of Charles Theodore, whose firm (Theodore Weaver Associates) did the Masiello firm's structural engineering, William Masiello said, "he's my laundromat." When the Commission found two checks payable not to Theodore Weaver Associates but to Theodore Associates, each in the amount of \$4000, each made out in 1975, each charged to "engineering," Masiello explained what was happening:

Any checks that I laundered through Mr. Theodore were only made out to Theodore Associates.⁵²

When we first started doing work with Charlie [Theodore], Charlie had a structural engineering firm named Theodore Associates. He then went into a partnership with Theodore Weaver, but never closed the Theodore Associates checking account. So, between he and I we figured that this way, how to siphon money out of the account, hoping we could cover it up.... What I did, I wrote out a check made out to Theodore Associates. He would take this \$4000 and this particular date, February 7, '75. He took this \$4000 check, deposited it into the Theodore Associates account. He in turn would then make out

a check to himself, Charles A. J. Theodore, and then return the cash to me.⁵³

As I think back, most of the money that I generated in this fashion were in one way channeled to [deputy mayor of Boston Robert] Mr. Vey.⁵⁴

The Theodore laundering system illustrates not only a method of cash generation but a way to make cash generation tax deductible, by making it appear that the check used to generate cash had been used to pay a legitimate expense of doing business.

One substitute for cash bribes was the payment of money to public officials under the guise of payments for actual services or products, whether engineering, accounting, legal services, supplies, or commissions. An instance of such cover-up accounting occurred in the 1971-1972 payments of a series of \$500 checks to Senator James Kelly (treated more fully in a later section). In 1972, when the firm's ownership passed from Kassuba to Frank Masiello and then to William Masiello, the financial records were partly returned to Worcester, and Audrey Rawson had to reconstruct the ledgers for 1972 from incomplete information. She charged the Kelly checks to "legal and accounting expenses,"⁵⁵ but Rawson and others testified that Kelly's firm never rendered any accounting services to Masiello & Associates.⁵⁶ But even this method of accounting for the payments to Kelly was too revealing for Masiello. "He said that he thought it was a conflict of interest and ... that he would not continue sending the checks to Jim Kelly ... he definitely would not buy the firm from Frank as long as this practice was going on,"⁵⁷ Rawson recalled. The solution? The \$500 monthly payments to Kelly continued under William Masiello's supervision of the firm, Rawson testified. But they were continued in cash: no more checks, and no accounting at all.⁵⁸

Whomever the payee, whatever the amount, the checks that were cashed from 1973 through 1977 were both frequent and sufficiently large to constitute what turned out to be an unsupportable drain on the finances of the firm. In 1977, both the number of the checks and their total dollar value were declining (see Table VI above); but so were the fortunes of the Masiello firm. Publicity from the federal DiCarlo-MacKenzie trial had done William Masiello no good. (Nor had his leaving Massachusetts for two months to avoid being subpoenaed in connection with that trial.) One day in 1977, just after the trial, the core of his staff resigned in a body, and that crippled the firm. In 1978, the Dukakis administration cancelled all the firm's contracts with the Commonwealth when Masiello refused to cooperate with the Post-Audit Subcommittee investigation of the DiCarlo post-trial allegations concerning MBM--which led to the formation of the Special Commission. For years the firm had been revolving funds on a

circular path, from suppliers and sub-bidders (as the sections on supplier fraud will discuss) through Masiello to politicians and public officials and back, in the form of contracts and purchase orders, to suppliers and sub-bidders again. But with trouble besetting the firm on all sides, it was becoming hard to make the ends of the circle meet.

Toward the close of his third day of testimony before the Special Commission in May, 1980, William Masiello said, "It is hard to trace cash except if you use computers like you people did."

Commissioner Daniel Mahoney then asked, "So, it is not as easily detectable, is that fair to say?"

"I found out it is detectable," Masiello replied. "I will tell you if I ever came this way again, I wouldn't do it that way. I will tell you."⁵⁹

FRANK MASIELLO IN THE 1960s:
THE EDUCATION OF A POLITICAL ARCHITECT

INTRODUCTION

At a public hearing before the Special Commission on March 25, 1980, architect Frank R. Masiello, Jr., now of Florida and formerly of Worcester, became the first witness to give testimony of extortion, payoffs and illegal political contributions in exchange for contracts to design public buildings in Massachusetts. The first two days of his testimony concentrated on one deal for one big contract. He told the Commission in detail how in 1968 he had been the intermediary between officials of the Los Angeles architectural firm of Daniel, Mann, Johnson, Mendelhall (known as "DMJM") and Republic fundraiser Albert P. ("Toots") Manzi. The deal: tens of thousands of dollars in "political contributions" by DMJM to Manzi in return for the award of a million-dollar contract to design a complete new campus for Holyoke Community College. Masiello's own firm was to be DMJM's consultant on the project.

After two full days of testimony explaining that deal, the Commissioners had some questions: Who was Frank Masiello? How, by 1968, had he become the go-between in a political scheme to sell a major state contract? Who was Toots Manzi, Worcester grocer and extraordinary campaign fundraiser? How did he have the power to shake down one of the world's largest architectural firms for thousands of dollars, then deliver on his part of the deal -- the award of the contract?

To begin answering those questions the Commission took evidence of Frank Masiello's architectural practice and political activities in the years leading up to the DMJM deal in 1968. Its research showed that, overall, the Masiello firm earned total fees of \$5,463,286 from 132 state and county building contracts starting in 1959. Those statistics made Masiello the most successful architect ever in landing contracts within the Commission's mandate.¹

In public testimony before the Commission on March 27, 1980 Frank Masiello related the process which had brought him success in obtaining and continuing various state projects.

I had heard from other architects that one of the best ways to insure your continuation on existing contracts that might have a possibility of going into the next phase was to make political contributions when you were asked by the administration in office and it seemed to work very well. So, I continued to make these contributions when I was asked.²

The following account focuses on one of these projects -- the proposed Joseph P. Gentile School for the Mentally Retarded in Springfield. It is also a

2

chronology of an overall pattern in which Masiello was able to continue contracts on existing projects while obtaining new ones. The account documents the growth in scope of these projects over time as Masiello became increasingly involved in political fundraising. But it also shows that Masiello paid a high price for his involvement in the political system of contracts for contributions.

In 1960, the initial master plan contract for MCI-Concord was let to the Masiello firm. In that same year a contract to begin the design of new buildings at Danvers State Hospital was also awarded to Masiello. It was Masiello's theory that the best public design contract was one to perform initial program studies or master planning on a big project. Then the architect holding that initial contract was always first in line for all the subsequent building projects covered by the overall master plan.

However, the problem with that continuation approach was that State House administrations changed faster than the progress of the architectural work. So, at the time of Governor John Volpe's defeat by Endicott Peabody in the fall of 1962, Frank Masiello, was concerned with protecting the Concord and Danvers projects. He was concerned because, as was customary, the outgoing administration had held off on awarding contracts for the next phases of these projects until after the election, even though the 1962 capital outlay program had already been enacted.^{2A}

THE BEST WAY TO CONTINUE CONTRACTS

According to Masiello's public testimony, "when I woke up that morning, the day after the election, it appeared that Governor Volpe might have been defeated. ... I knew he was going to have a deficit in the campaign." Masiello went on to testify that he then called the Commissioner of Administration & Finance (A&F), Charles Gibbons, and told him he would like to come to Boston and make a contribution to help defray Volpe's campaign deficit. Masiello received permission and arrived in Gibbons's office at the appointed hour. He introduced himself to Gibbons and gave him a check for \$500. Gibbons told Masiello that he was sure Governor Volpe would appreciate his generosity, especially after his defeat in the general election.³ At the time Masiello made the \$500 contribution, the capital outlay budget, as passed, included \$100,000 for preparation of plans for Stage I at MCI Concord, but that new phase of the Concord project had not been awarded to any design firm.⁴

A week or two later, Frank Masiello received a phone call. At that time, Masiello had never met the man who called him, but, "I knew him to be a very

powerful political figure, his name is Albert P. ('Toots') Manzi."⁵ Manzi asked Masiello to come to Manzi's Market on Shrewsbury Street in Worcester. Masiello drove down to the market and met the Republican fundraiser for the first time.

Masiello: Yes. I drove down to his office, as I recall -- down to his market, as I recall, and he very quickly told me without wasting any time, he said if you'd like to be continued on these contracts, I probably can arrange it, but you're going to have to make a political contribution and help underwrite Governor Volpe's deficit.⁶

Masiello told Manzi he didn't think that was fair because the original contracts had been awarded under a previous administration, but said he would think about it. Instead, Masiello went to see Commissioner Gibbons again. He told Gibbons that Manzi was putting the arm on him for a contribution, and he felt he had been generous in his contributions to the Volpe campaign. Gibbons said he didn't like "this strong arm business". He asked Masiello for the numbers of the projects that were up for continuation, and told him that he need not worry about his firm being continued on the contracts. Gibbons told Masiello to let him know if Manzi called again. He did not call again; Masiello & Associates received its contracts a few days later.⁷

Masiello was then asked:

Q. After Governor Peabody took office, were you concerned about the status of your firm to design contracts with the Commonwealth?

A. Yes. I heard some gossip and some rumors around that because Governor Peabody was just coming into office ... that some of the contracts executed in the dying days of the Volpe administration would more than likely be cancelled."⁸

Masiello then, according to his testimony, contacted some Peabody supporters in Worcester and expressed his concern. Shortly thereafter, he received a call from Sherwood "Woody" Tarlow, a banker and then the campaign treasurer for Peabody. Tarlow arranged a meeting with Masiello at which Masiello discussed his concerns about the contracts.

Masiello: He [Tarlow] recognized my concern. He said, well, he said, well, maybe we can get that straightened out. He said Governor Peabody is going to need a lot of help in overcoming his campaign deficit that he has incurred and there is going to be a fund raising party some time later on and possibly you might be interested in buying a couple of tickets to it.⁹

Over the two years of the Peabody administration, Masiello worked with Tarlow to raise funds and contributed \$4,000-\$5,000 of his own money to the cause as well. During the 1964 Democratic State Convention, Tarlow assured Masiello that he would choose his firm for a project after the capital outlay budget was enacted.^{9A} An appropriation of \$3,500,000 for construction of Stage II and preparation of plans and specifications for Stage III of MCI-Concord was included

2'
in the capital outlay budget, but Masiello & Associates did not immediately receive contracts for those new phases of the project.

Masiello became concerned and went to see Tarlow at his home. Tarlow told him that his firm was going to be continued on the Concord and Danvers projects, but Masiello was not satisfied with that. He said, "I don't know why I have to pay dues on projects I received in previous administrations."¹⁰ He reminded Tarlow of all the political work he had done for Governor Peabody. Tarlow then promised him two new projects which the firm later received: a dormitory at Fernald State School and a geriatrics building at Westboro State Hospital.¹¹

The contracts for design of D, E and F buildings (P61-1 #3) and H, K and L buildings at MCI-Concord (P61-1 #4) were awarded to Masiello & Associates in 1964 following Governor Peabody's defeat in the Democratic primary by Lieutenant Governor Francis X. Bellotti.

Tarlow testified before the Commission that he knew Frank Masiello, and that Masiello was involved in fundraising for the Peabody administration. He indicated that the meeting at his home with Frank Masiello occurred "pretty much" as Masiello described it. Tarlow testified that he recommended to A&F Commissioner William Waldron that Masiello & Associates be appointed as the designer for the Fernald State School and Westboro State Hospital projects, as well as continued on the Concord and Danvers projects.¹²

Masiello testified that as he was driving back to Worcester from the meeting with Tarlow, he made a resolve:

Q: ... when you left Mr. Tarlow's home you made a resolve to yourself?

A: Yes, sir I did. I thought as I was driving back to Worcester that you really can't trust politicians, at least that was a feeling that I had.

Q: In the future you would conduct yourself in a particular way?

A: Yes.

Q: What was that?

A: I did, and I made up my mind at that point that when asked to make a political contribution I want to have no doubts in anyone's mind that if I made a contribution that I did in fact expect to be favorably considered for either a continuation of work that we currently had under contract or projects that would require architects, engineers, assignments and that we would receive contracts on that basis.¹³

Shortly after Governor John Volpe took office for the second time in 1964, Toots Manzi asked Frank Masiello to come down and see him at Manzi's Market. Masiello related the incident as he continued his testimony at the public hearing of the Special Commission on March 27, 1980.

A: Yes, I was called by Toots Manzi and he informed me there was a fundraising activity coming up in the near future to help to

underwrite the deficit that Governor Volpe had incurred, and he wanted to discuss it with me.

27

I recall the promise I had made to myself, and I said fine, Toots, I would be happy to come down and discuss it with you. I did, I made arrangements to go down to his market and I went in there.

Q: What was your discussion with Mr. Manzi in his market on that occasion?

A: The substance of the conversation was essentially I agreed to financial support or assisting Governor Volpe, and the deficit that they were attempting to overcome. I would purchase tickets to the fundraising activity, but it would be on the premise or on the assurance that if I did undertake these activities that I wanted a firm promise that we would be allowed to continue on our existing contracts that we had in effect at that time, new contracts we had received, and hopefully be assured that when another capital outlay program came out in the future that we would be favorably considered for possibly another project.¹⁴

Masiello testified that he and Manzi then had a heated exchange concerning the MCI-Concord and Danvers projects:

A: The first reference to Concord and Danvers was that he said you have got two very large contracts in Concord and Danvers, and we expect that because of those two projects that are continuing that were given to you during our first administration that we expect that you are going to give us -- we would expect that we would get a very substantial political contribution on behalf of the Volpe Administration to let you continue on those contracts or extend you on those contracts.

I got very upset with that. I said, Toots, I am getting sick and tired of this whole darn thing. Every time a new administration comes in it is the same old thing. They are doing you a favor of continuing you on a contract that I have already paid my dues on.

I am getting sick and tired of being taxed two and three times for the same projects I received in other administrations. I will be very happy to assist you in helping anyway that I can with the understanding that I don't want to hear any more about Concord or any more about Danvers.

So, after that discussion he said, well, okay. He said, I will tell you what. He said, your involvement in obtaining additional work from this administration will be directly in relation to the amount of money you contribute and the amount of money you raise for fundraising activities whenever I request it of you.

I agreed that that would be fine, and we proceeded on that basis.¹⁵

THE CONNELLY SCHOOL: A VERY SLIM YEAR

Masiello testified that he then assisted Manzi in raising approximately twelve to fifteen thousand dollars for the Volpe campaign fund in 1965 and 1966, of which Masiello himself contributed four to five thousand. Masiello recalled that in late 1965 he met with Manzi in the State House (where Manzi used a desk in an anteroom to the Governor's office), and that Manzi then promised him the design contract for the upcoming Walter J. Connelly School for Juveniles:

So. I go down to meet him the next morning and met him in the Governor's office. I waited there for him for awhile, he was busy doing something else, and when he came out, he said let's go down to Joe Silvano's office.

We then went downstairs to a low floor and went into Joe Silvano's office. Again, he didn't bother to knock or anything. Again, he just opened the door and we went directly into Silvano's office, and we sat down in front of him and Toots explained to Joe that I had been a supporter and financial contributor to Governor Volpe, he did not identify the magnitude of my involvement other than that I was a good supporter of the Governor's.

He said have you got anything we can tell Frank, and he says yes, he had. So, he had a list of several papers on his desk, and he thumbed through three or four pages before he finally settled on a page, and he looked down and he said we are going to give you a project, and I said what is the project. He says that project is the Walter J. Connelly School for Juveniles.

Of course, I was delighted because that was an area we were familiar [with] ... and I was delighted we were getting that project. I inquired was that all and he said yes, it was a very slim year and having contracts available for awards, and I said thank you, very much.¹⁶

On February 9, 1966, Masiello executed the design contract for the Connelly school, a project whose suspension in late 1966, after the Masiello firm had received \$30,767 in fees, led Masiello to seek a new project. In September of 1966 the Legislature and appropriated \$300,000 for the preparation of preliminary plans for a new school for the mentally retarded in Springfield, to be known as the Joseph P. Gentile School.¹⁷

THE GENTILE SCHOOL PROJECT

In March, 1967, the Commonwealth's newly created architectural review panel, the Designer Selection Board (DSB), met to screen the many applications for the project whose estimated construction cost of \$10,000,000 made the school an attractive acquisition for any architect.¹⁸

The DSB was established late in 1966 as the result of political controversy surrounding the selection of the designer for the University of Massachusetts Medical Center. The Board was mandated to advertise state design contracts, screen the applicants, and select at least three finalists, from which the Commissioner of A&F would appoint the architect of record for the project.¹⁹

Frank Masiello testified publicly before the Commission that he first learned of the availability of the Gentile project through the DSB's public advertisement, and that he then submitted an application to the DSB. Thereafter, Masiello's was one of the "four to six" firms which survived the DSB's preliminary screening and was then invited to be interviewed by the Board.²⁰

On March 29, 1967, the DSB voted to recommend three design firms to the Commissioner of A&F for the Gentile School project. One of these three finalists was the Worcester design firm of Masiello & Healy, Architects, Inc.²¹

The Board's nominations to the Commissioner were originally intended to convey to A&F the DSB's preference among the three finalists, by ranking them one to three. This practice was ended shortly after it began when Anthony P. DeFalco was appointed Commissioner of A&F in 1967. DeFalco felt that it was entirely the responsibility of the Commissioner to select among three equally qualified candidates, and therefore insisted that the DSB forward the names of its nominees in alphabetical order, purely at random, "in no particular order".²²

Before the DSB published its list of three finalists, Masiello received a telephone call in his Worcester office from Toots Manzi telling Masiello that his firm was going to be on that short list which would be sent over to A&F. It was during this conversation with Manzi that Masiello first learned of his selection as a finalist by the DSB.²³

During this conversation Manzi suggested that Masiello visit him at his Worcester market and discuss the upcoming A&F contract award on the Gentile School. Masiello did so and has testified that Manzi thereupon demanded a "substantial political contribution" in return for Masiello's selection as the school's architect of record by the Commissioner of A&F.²⁴ Manzi not only demanded a contribution but also insisted that Masiello hire the Boston engineering of Universal Engineering as his consultant on the project.²⁶

Masiello testified that he was "simply incredulous" at Manzi's approach:

I looked at him, I was simply incredulous, I said cripes, Toots, it looks like the only thing that's changed was the name of the office, before it was the Office of Patronage, now they gave it a new name, Designer Selection Board, everything remained the same. What was the name of the game of appointing this new committee? He said that's what it is if you're interested in the project. That's the way it's going to be if you want the job. That's the way you're going to have to get it.

So, I reluctantly said well, okay, what do you demand, what did you want. He said well, before I discuss it any further with you, he said I would like you to call up David Nassif of Universal Engineering Company, and I would like you to go down and see him and negotiate a fee that your firm is to pay him for doing all of the -- providing all of the engineering services on the project. I said and? And he said then I would like you after you have negotiated with David Nassif, he said I would like you to get back in touch with me and we'll discuss the extent of the political contribution.²⁵

Masiello testified that he then visited the Boston office of David Nassif, principal of Universal Engineering, who had apparently been advised by Manzi to expect Masiello. Nassif told Masiello that Universal wanted a fee of 30 to 40% of Masiello's total architectural fee for the Gentile project. Masiello thought that this "was one of the great holdups of all time." He managed to settle on a

fee to Universal of about 33 percent of his own fee for the job, a figure which Masiello still considered steep for an outside consultant.²⁶

Masiello concluded his negotiations with Nassif and returned to Manzi's Market where he and Manzi began to discuss the specifics of Masiello's "contribution." Manzi insisted that a contribution of 10% of the total anticipated design fee of \$455,000 would not be an unreasonable amount. Masiello testified that when he objected to this amount, Manzi offered to allow Masiello to use his own engineering consultant instead of Nassif if Masiello agreed to contribute \$25,000.

So, finally, he said well, the least we would consider for the project, he said, that project is going to give you fees of approximately four hundred fifty to five hundred thousand dollars, and we don't feel that \$25,000 is too unreasonable.

I said, well, I consider it an unreasonable amount of money. I said, it is a terrible situation, you know, to expect that kind of payment. I said, I suppose you want it in cash. He said, of course because, he said, that is the only way that we would like to have it.

The Governor is going to be involved in some heavy political activities in the next couple of years, and for that reason we would like to get as much of it in cash as we possibly can.

So, I said well, Toots, I said, I don't like using Dave Nassif. I don't want to use Dave Nassif. His fees are too exorbitant. Charlie Theodore is a very fine structural engineer and was one of the contributors to the Governor's campaign. You have accepted a lot of dollars in contributions from him. I think it is a terrible thing now that I have to call him up and tell him that I am being pressured to use another firm. He then said, well, okay. I will give you Theodore if you go along with the \$25,000. So, quickly, in my mind, I thought well, I better discuss maybe another couple of ground rules with him.

I said, Toots, I said, I guess over the period of years while this job was under way I can probably handle that, but it is going to be with the understanding that there will be no up-front money paid and that we will make contributions to the campaign or make cash payments to you as the job progresses, but only in proportion to the fees that we receive.²⁷

Masiello testified that he then agreed to commit himself to the \$25,000 amount, but not up front, and only in proportion to his own eventual payments. Manzi "wasn't too thrilled with that," but eventually agreed, conditionally.

He [Manzi] said, that one I am going to have to check back on. He said, I don't think I can get my people to go along with it.

I said fine. I said, go ahead and do this. Sometime later, probably maybe a week later he called me up and he said, Congratulations. He says, you are going to be appointed to the Joseph P. Gentile School, and I hope that you will remember that you did make a commitment and how much the commitment was for.²⁸

Commissioner DeFalco notified the state's construction management agency, the Bureau of Building Construction (BBC), on April 27, 1967 that the Masiello firm was his choice from the three submitted by the DSB. The BBC in turn advised Masiello of his selection on May 5, 1967.²⁹ The Masiello firm then began to prepare site and program studies for the Gentile School.

Things did not proceed smoothly on the Gentile School project, however. Due to what Masiello characterized as "one general bureaucratic mess,"³⁰ it was not until more than a year later, on September 27, 1968, that Masiello & Healy received its first fee payment, for \$2,355.³¹ Shortly thereafter, on October 13, the firm was notified by the BSC that the project was being put on a "hold" status because of DMH program and site problems.³²

MCI-NORFOLK: A JOB NOT WORTH GOING AFTER

Both the Gentile project and the Connelly School were now at a standstill. Reorganization of the Youth Services Division, the agency responsible for the Connelly project had caused suspension of work in late 1966.³³ Thus, in an effort to compensate for the two stalled projects, Masiello decided to pursue other public projects through the DSB.

In early 1968 the Masiello firm applied to the DSB for consideration for a \$25,000 design study contract at MCI-Norfolk. Masiello attempted to ensure his firm's participation in this project by arranging with a competitor, the New York architectural firm of Curtis & Davis, that whichever firm won the contract would hire the other as its consultant.^{33A} Masiello once more sought the intercession of Manzi. Masiello testified that he arranged a meeting with Manzi, once again at the Worcester market, and asked Manzi for his support on the MCI-Norfolk project:

Q: And what was your conversation there?

A: Well, the substance of the conversation was that I would like to have him, if at all possible, use the same kind of influence that he had used in obtaining the Gentile contract for us.

I reminded him of the fact that both the Connelly job and Gentile job had virtually come to a standstill, and he told me, he said Frank, I'm not going to go and -- the job isn't worth going after, its not large enough to go after.

He then said, I'm not going to put in any recommendation for you. So, I said are you certain you won't, and he said Yes, I'm certain I wouldn't. I refuse to do this. At this point I mentioned the name of another firm and he says well, we'll see.

I said well, Toots, I feel you owe me one. He said Frank, I want you to understand one thing very clearly, I don't owe you a thing. As far as I'm concerned if I can help, when I can help, fine. If I can't help then its just too bad for you.³⁴

Masiello recalled that this meeting took place around the time of the DSB interview for the Norfolk job, but prior to the DSB vote. On April 11, 1968, the DSB nominated three firms including Masiello & Healy, and Curtis & Davis.³⁵ Curtis & Davis was awarded the contract and thereafter selected Theodore Associates and Gildor & Walkenstein as its consultants.³⁶ The Theodore firm was a regular consultant of the Masiello firm; it was the consulting firm that Masiello had intended to use on the Gentile School rather than Universal

Engineering.³⁷ Joseph Gildor and David Walkenstein were two employees of the 32 Masiello firm who worked in Masiello's Worcester office.³⁸ Thus, with or without the intervention of Toots Manzi, Masiello got the job. That is, the consulting fees were paid to associates of the Masiello firm, if not to the firm directly.

It was during this same period in 1968 that Masiello was also trying to obtain the support of the BBC and of A&F for the selection of a California-based architectural firm for another public project. This lobbying effort necessitated still further discussions with Toots Manzi.

MANZI PUTS PRESSURE ON MASIELLO

Masiello testified before the Commission that he was first contacted by the Los Angeles firm of Daniel, Mann, Johnson, Mendenhall (DMJM) in early 1968, and that the contract DMJM sought was to design a complete new campus for Holyoke Community College. Masiello believed that DMJM contacted him to propose an association with his firm, because of his "political connections" and its resulting success in obtaining public contracts. The design fees for the project were then expected to be seven to eight hundred thousand dollars; in fact, the total fees increased to about \$2 million as time progressed.³⁹

Masiello testified that when DMJM contacted him, he embarked upon a two-part strategy to effect DMJM's selection for the college by introducing executives of the firm to BBC officials and to A&F Commissioner DeFalco. However, shortly after Masiello arranged these introductions he received an unsolicited telephone call from Toots Manzi. Manzi chided Masiello for trying to bypass him by going directly to the BBC and A&F. Manzi told Masiello that even if DMJM made it through the selection process from the DSB to A&F, Manzi would see to it that DMJM would not be selected by A&F unless DMJM agreed to make a substantial political contribution. This Manzi-Masiello discussion, over an ice cream cone at the Pinecroft Dairy in West Boylston, was the first in a series of negotiations between the two, with Masiello acting as DMJM's intermediary with Manzi.⁴⁰

The DMJM story is told in another section of this report. Its importance here is that the deal between Manzi and DMJM became one of the subjects of pressuring phone calls from Manzi to Masiello which increased during 1968.

Masiello: ... these calls kept coming through. I was getting them on the Gentile School, even though we hadn't performed a whole lot of services, hadn't received any money, and later on in the year, of course, we were getting pressure on the DMJM project for Holyoke Community College, and I was just going

Masiello testified that as 1968 went on Manzi's calls intensified. These calls were made to Masiello's home in Sutton and generally occurred on Sunday mornings. They were so persistent that "they were always present. It was almost like a cloud hanging over me."⁴²

"Manzi was like cancer, right there, always a shadow."⁴³ Masiello testified that Manzi's continuing solicitations imposed a severe strain upon his wife, eventually becoming so burdensome that Mrs. Masiello underwent medical treatment and spoke of divorce.⁴⁴ Masiello testified that he and his wife decided to sell their Sutton home and move to Florida in an effort to escape this "unbearable pressure."⁴⁵

The Masiellos sold their Massachusetts home in August of 1968 at a price which Masiello felt was considerably below what the market might bring.⁴⁶ Masiello and his wife decided to relocate out of state in order to avoid "everybody and his brother having their hands in my pockets."⁴⁷

Masiello, however, continued to direct his firm's Massachusetts projects, residing in a Worcester apartment when commuting from Florida.⁴⁸ Manzi's calls continued despite Masiello's unlisted numbers, and also began to be directed to Masiello's brother, William V. Masiello, who was employed in Masiello's Worcester office.⁴⁹

"THIS IS COMING OUT OF MY HIDE"

As the pressure from Manzi continued, Masiello testified that he decided to "break his own rule" against paying for a contract up front, without first receiving design fees on the job, and arranged two \$5,000 cash deliveries to Manzi.⁵⁰ These payments, motivated by Masiello's desire to relieve the pressure of Manzi's demands and to enlist his help in reactivating the Gentile School project, were financed by the sale of the Sutton home, and occurred in August and the early fall of 1968.⁵¹

The pressure put on me by Manzi was so unbearable that I just to get him off my back and just to have him stop bothering me and have him stop bothering my brother Bill when I was out of state..., I reluctantly withdrew \$5,000 from the proceeds of our house sale; and I called him up and I told him I was prepared to make a payment on the Joseph Gentile School. I had \$5,000 in hundred dollar bills and I took them down to his store and I was just furious that I had to do this and take things out of my personal life to accommodate his greed and whoever else's greed was involved.

I very deliberately counted out \$5,000 in front of him. I said this is just so that you understand that this is \$5,000. It is coming out of my hide. It is coming out of my family but if it is that important to you, you can have it, and I gave it to him. He was kind of quiet after that....⁵²

Masiello testified that he then rejoined his family in Florida, but Manzi's calls resumed. Even after the \$5,000 payment, Masiello continued to receive calls at the Worcester apartment he kept after moving to Florida. When Masiello was in Florida, his brother William, then overseeing the financial affairs of Masiello's Worcester office, was the target of Manzi's pressure.⁵³ Frank Masiello testified before the Commission that this pressure convinced him to make a second payment to Manzi.

I went up to the bank in Worcester [in which] we still had some money in the savings account that we were getting ready to transfer to Florida to acquire a new home and I took \$5,400 out of the bank; \$400 for my own personal use and \$5,000 in cash. Again I called him up. I brought the money down to the market. I went straight through the same ritual. I essentially said the same thing to him about paying him this money, telling him that it was coming out of my family....⁵⁴

Masiello recalled obtaining a cashier's check in the amount of \$5,400 at the Home Federal Savings & Loan Association in Worcester, and crossing the street to cash it at the Commerce Bank & Trust office located on the corner of Harrington and Commerce Streets in Worcester. Masiello testified that he delivered this second \$5,000 payment to Manzi in hundred dollar bills.⁵⁵

In interviews with the Commission's staff, Masiello said that Manzi's increasing pressure during 1968 was generated by the necessity of raising funds for Governor Volpe's activities at the Republican National Convention in Miami in August, 1968.⁵⁶ Masiello testified that he was asked to attend this convention by Manzi to help pay the expenses of entertaining delegates in attendance.⁵⁷

When former A&F Commissioner DeFalco testified publicly before the Commission on April 9, 1980, he recalled receiving money from Manzi for the 1968 convention. DeFalco said that it was his "best recollection" that he received \$1,000 from Manzi for convention travel expenses, and that he obtained this amount in the form of hundred dollar bills in August of 1968.⁵⁸

Masiello testified that, at least partly as a result of Manzi's pressures, he decided to seek a buyer for Masiello & Associates when he relocated to Florida. One of the candidates seeking to purchase was a nationwide real estate development company, Kassuba Development Corp., with which Masiello was associated as a consultant after he moved to Florida. During negotiations with Kassuba executives in 1969, Masiello explained his company's success in Massachusetts public contracting, as well as the extent and nature of the political commitments necessary to acquire and retain those contracts. Masiello testified that he specifically informed Walter J. (Judd) Kassuba, the firm's chief executive officer, of his \$10,000 payments to Toots Manzi, and of the remaining \$15,000 obligation which Manzi would demand if the Gentile project should ever be revived. While Kassuba was surprised at the extent of these

contributions he was, according to Masiello's testimony, prepared to honor the commitment. In November of 1969, Kassuba purchased the Masiello firm for \$200,000.⁵⁹

MORE MONEY AUTHORIZED FOR THE GENTILE PROJECT

After Masiello had sold his firm to Kassuba in late 1969, but before he bought it back in February of 1972, the original 1966 legislation which made an appropriation for the Gentile School was amended by Chapter 976 of the Acts of 1971 to increase the total project cost from \$6.5 million to \$13,744,000.⁶⁰ In other words, the legislature increased the amount of money authorized by law to be spent on the project. Had the Gentile School gone forward, the new authorization would have permitted the architectural firm to compute its fees on the basis of a higher estimated cost of construction.

William V. Masiello, then in charge of the Worcester office, testified that he was responsible for effecting this legislative "word change" which could have increased the designer's fee by \$500,000. He stated that he was able to do so because of his close relationship with the chairman of the Senate Ways and Means Committee, Senator James A. Kelly, Jr.⁶¹ That relationship is described later in this section of the report.

William Masiello's statement that he used Senator Kelly's influence was corroborated by the private testimony of James Kerr before the Commission on January 11, 1980. Kerr, chief engineer of the Department of Mental Health in 1971, testified to a meeting with Senator Kelly and William Masiello in Kelly's office concerning an increase in the Gentile School appropriation. Kerr remembered that the increase was "somewhere around seven million dollars."⁶³

According to Kerr's testimony, Senator Kelly called the meeting to ask the Department of Mental Health to initiate a request for more funding.⁶⁴ The Commission's review of relevant files disclosed a June, 1971 letter from Mental Health Commissioner Milton Greenblatt to Charles E. Shepard, Commissioner of A&F, requesting the word change. A copy of the letter was sent to Senator Kelly attached to an internal memo from William to Frank Masiello dated June 30, 1971 regarding the "Springfield School for the Retarded."

OVER TWO MILLION DOLLARS IN DESIGN FEES FOR THE MASIELLO FIRM

Neither Frank nor William Masiello succeeded in reviving the Gentile School project. The contract remained pending until March, 1978, when Governor Michael

S. Dukakis cancelled all the pending state contracts of the Masiello firm. He did so because William Masiello refused to cooperate in an investigation of state contracts by the Legislative-Post Audit Committee. By then, the Masiello firm had received \$72,129 in design fees on the Gentile project -- a high price paid by the taxpayers for a project which has never been built. The price was also high for the Masiellos, however, because Frank Masiello "broke his own rule" and paid Toots Manzi \$10,000 "up front" for the contract even though it was going nowhere in 1968.

As for the Danvers and Concord projects, public records indicate that upwards of \$621,000 in design fees was paid to the Masiello firm for the Danvers project between 1960 and 1974. MCI-Concord was even more lucrative. Between 1960 and 1978, the firm earned a total of \$1.6 million dollars in design fees. The total cost of projects built at MCI-Concord over that period of time was \$18.5 million dollars.

So, Frank Masiello had some reverses, such as the Gentile project, by which he learned the hard way about the risks of connecting contributions and contracts. He paid a high price when, as he said, the contributions came "out of my hide," "out of my family." But the overall success of the firm in winning state design contracts reinforced the lesson with which Frank Masiello began his testimony before the Commission: "one of the best ways to insure your continuation on existing contracts that might have a possibility of going into the next phase was to make political contributions when you were asked by the administration in office and it seemed to work very well." Whatever the administration, Masiello continued to contribute when asked. The result was 132 contracts and \$5,564,286 in design fees from the Commonwealth.

HOW MASIELLO USED POLITICAL CONTRIBUTIONS
AS "DOOR OPENERS" TO SUFFOLK COUNTY CONTRACTS

INTRODUCTION

In 1970, the architectural firm of Masiello & Associates began an eight year association with the County of Suffolk through the Boston Public Facilities Department (PFD). This association proved to be extremely profitable for the Masiello firm and very costly for the taxpayers of Boston. Over the period between 1970 and 1978, the Masiello firm was involved in four design contracts with the PFD which resulted in the payment of more than \$400,000 in design fees to Masiello & Associates. According to William Masiello, the "door opener"¹ to the award of these contracts was his fundraising activity on behalf of Boston Mayor Kevin White's campaign for Governor in 1970.

The following is a report of the Commission's investigation of this association which showed the connection between continuing political fundraising by Masiello and others and the award of architectural contracts by the PFD. The findings center around two of Masiello's contracts -- the Dudley-Harrison Fire Station and the Charles Street Jail/Deer Island project.

MASIELLO'S POLITICAL FUNDRAISING ACTIVITIES: THE DOOR OPENER

William Masiello was introduced to Boston politics in 1970 by his close political friend, State Senator James A. Kelly, Jr.* At that time, Senator Kelly was a supporter of Mayor White's gubernatorial campaign. At Kelly's request Masiello raised and contributed some \$8,000-10,000 to White's campaign.² This sum included money solicited from Masiello's consultants and professional acquaintances including Anthony E. Mansueto, Vice President of McKee-Berger-Mansueto (MBM).

MBM's contribution was disclosed in post-trial papers in the Dicarlo-Mackenzie case made available in late 1977. The contribution was investigated in 1978 by the Post Audit Subcommittee and is discussed in the Subcommittee's report on MBM, dated August 14, 1978.³ On October 19, 1970, MBM issued a \$2,000 check on an account it maintained with the New England Merchants National Bank, payable

*Masiello's relationship with Kelly is described in a later section of this Chapter of this Report.

**MBM's contribution to the White campaign is discussed in Chapter V of the volume of this Report on the Commission's Investigation of MBM.

to Kevin White. That check was voided and another issued, for the same amount, to William Masiello. Masiello signed this check over to Senator Kelly who in turn signed it over to the Kevin White for Governor Committee.** With the exception of this corporate check, the contributions were in the form of personal checks, accompanied by the names of the donors. In 1970, corporate contributions to political campaigns were illegal. The remaining personal checks, so far as is known, were within the limits of the law. The money raised by Masiello was for a party held at the Peter Stuyvesant for Kevin White on October 21, 1970. For his efforts, Masiello received a letter of thanks from Kevin White dated November 20, 1970.⁴

Shortly after the initial fundraising effort, Masiello gained introduction to the PFD, and specifically to its Director, Robert Kenney. Evidence indicates that this introduction was made by Senator Kelly.⁶ Almost immediately following this introduction, the PFD awarded Masiello & Associates the design contract for the Dudley-Harrison Fire Station.

Masiello testified that he was awarded the contract because of the firm's expertise in fire station design and that the award was legitimate, but acknowledged the importance of his fundraising activities:

THE WITNESS: I want to say totally legitimate; in other words, there were no payoffs involved there, and I got this contract, I suppose, because I assisted in the White campaign.

MR. MC CARTHY: Do you believe, Mr. Masiello, that you would have secured the Dudley-Harrison Project had you not made a contribution to the White campaign?

THE WITNESS: Certainly the contributions were a door opener, you know. We would all be naive to say that it wasn't. No, I am sure that because I raised funds, that was the door opener.⁶

Although the decision to award Masiello the Dudley-Harrison design contract was apparently made by Robert Kenney before he left the PFD for the Boston Redevelopment Authority in late 1970, the formal award and execution of the contract did not take place until Robert Vey had taken over as Director of the PFD. According to Vey's private testimony before the Commission, Vey discussed the decision with Kenney when Vey became Acting Director; Kenney indicated that he wanted Vey to proceed with the award to Masiello.⁷ When Masiello went to see Vey for the first time, Vey expressed some surprise that a Worcester architect had a Boston contract, but as Masiello testified, "that was about the extent of it. There was no problem."⁸

Between 1973 and 1976, Masiello continued to do fundraising for Kevin White. During this period, Masiello's fundraising was channelled through Robert Vey. On May 14, 1980 Masiello publicly testified before the Special Commission that during this period he raised somewhere between \$10,000 and \$20,000 for the white campaign organization. Most of this money was in cash. Masiello raised some cash through the sale of tickets to fundraising events to his consultants and engineers, and to acquaintances not necessarily connected with his business. He also bought some tickets himself.

In his testimony, Masiello detailed the process of receiving and selling tickets:

A. He [Vey] called me and he said there was a fundraiser. I would ask, what is it worth, and I would say give me three tables. If they were \$100 tickets, the terms that all fundraisers were, instead of the terms of tickets they called it tables, ten to a table. If they were \$100 tickets, ten at a table, if I asked for three tables that would be \$3,000.

Q. Mr. Vey told you three tables. That meant you had to come up with \$3,000?

A. That is correct.⁹

Q. On another occasion, what was your strategy in relation to coming up with the money as Mr. Vey would ask you for the tables or whatever it was?

A. Well, I did it in various ways. I raised it through suppliers. I raised money through an account that Charles Theodore and myself -- he would -- I loaned it through his account. I took some money out of my own personal account in various ways as I stated for the past three days.¹⁰

The Charles Theodore referred to in Masiello's testimony is a structural engineer who had done work for the Masiello firm since the 1960's. Later in his testimony, Masiello gave an example of the ways Theodore's account was used to raise cash:

A. The next one, Mr. Theodore, when we first started doing work with Charlie, Charlie had a structural engineering firm named Theodore Associates. He then went into a partnership with Theodore Weaver, but never closed the Theodore Associates checking account. So, between he and I we figured that this way, how to siphon money out of the account, hoping we could cover it up.

Q. How did it work?

A. I am trying to explain. What I did, I wrote out a check made out to Theodore Associates. He would take this \$4,000 and this particular date, February 7, '75. He took this \$4,000 check, deposited it into the Theodore Associates account. He in turn would then make a check to himself, Charles A. J. Theodore, cash the check and then return the cash to me.¹¹

Between 1971 and 1976, Masiello and Vey maintained a close social and business relationship. The Commission's research into Masiello's expense account reports and diary entries has shown that Masiello was with Vey socially on dozens

of occasions between July 22, 1971 and December 14, 1976. These occasions included lunches, dinners, drinks, golf, Red Sox and Bruins games and parties. This relationship allowed Vey to be quite open with Masiello about campaign contributions. With other architects and professionals doing business with the PFD, however, Vey used different methods to solicit funds.

VEY'S FUNDRAISING ACTIVITIES: THE POLITICAL BOILER ROOM

In 1975, Steve Nevas of WBZ-TV reported that Vey had operated a "political boiler room" in the First National Bank Building in downtown Boston during late 1974. Peter Scarpignato, Chief Planner for the PFD, said in interviews with the Commission that Vey's activities on behalf of White's campaigns were "common knowledge" at the PFD, but added that when news of the First National Bank Building activities came out, there was a general "sense of surprise" and nervousness among the PFD employees.¹² The Commission heard details of Vey's political fundraising activities in late 1974 and early 1975 from Patricia Vandenburg, Assistant to the Director of the PFD; Michael Sapia and Francis Falzarano, both contractors who had done business with the City; and Bradley Sack, a contract employee of the PFD.

In a private hearing before the Commission on May 2, 1980, Patricia Vandenburg invoked her constitutional privileges against self-incrimination and refused to answer all questions. Subsequently, upon the Commission's application to the Supreme Judicial Court, the witness was granted immunity from prosecution. On May 15, 1980 she testified publicly before the Commission about Vey's activities in the First National Bank Building.

From 1973 to 1975, Patricia Vandenburg was Assistant to the Director of the PFD. In her testimony, she stated that late in 1974 she received calls from several persons who had business with the PFD. Those persons were confused by what they had read about the new campaign finance laws and wanted to know how they could make political contributions so that everyone at the PFD would know they had done so. Vandenburg forwarded these calls to Vey's secretary to give to Vey. Shortly thereafter, Vey told Vandenburg that he had received these inquiries and had arranged for some space in the First National Bank Building.* He said that some people were going to come up there to speak to him about how to contribute. He asked Vandenburg to act as his receptionist.¹³

*The apparent reason that Vey made arrangements for the bank building space is that it is a crime to solicit a political contribution in a public building.

Vandenburg testified that she did act as receptionist for Vey in that office on about four occasions. She stated that she sat at a desk in a sparsely furnished office on an upper story of the building. There she received the prospective contributors (whom she recognized as contractors and others doing business with the PFD) and chatted with them until Vey was ready to see them. Vey then came out and greeted them, and took them into another office, three doors down, where he spoke with them. Vandenburg stated that these persons came to the office one at a time and spoke with Vey for less than 15 minutes each. While Vey was meeting with them, Vandenburg called others, from a list given her by Vey, and arranged appointments. Vandenburg does not know what was discussed in those meetings, but was told by Vey that they concerned how people should contribute.¹⁴

Sometime after these meetings, Vandenburg learned that the Attorney General of the Commonwealth was conducting an investigation into Vey's fundraising activities. She herself was called and asked to come to the Attorney General's office to discuss those activities. She immediately called Vey and was asked to come to his office. There she spoke with Mayor White:

Q. The Mayor spoke to you about it?

A. Yes.

Q. How did this come about?

A. He had been in Mr. Vey's office. I did not know he was there because I was in my office and Mr. Vey called me into the office and the Mayor apologized that as a City employee I had been put into this kind of a situation, and he said that he -- he was very supportive and said that he would make sure that I had representation with me when I went up to the Attorney General's Office.

Q. And was that representation provided to you?

A. Yes it was.

Q. And were you interviewed by the Attorney General's Office?

A. Yes I was.¹⁵

In an affidavit of May 15, 1980, Michael Sabia, an East Boston contractor doing business with the PFD, described in substance the same activities, adding certain critical details. Sabia stated that sometime late in 1974 he received a call from Patricia Vandenburg, who said that Vey wanted to see him. They made an appointment for Sabia to meet Vey in a private downtown office building (Sabia believes it was the First National Bank Building) at 4:30 p.m. sometime that week. Sabia described the office as follows:

The office location I was given was a suite on an upper floor of what I believe was the First National Bank Building. When I arrived, Ms. Vandenburg was sitting at a desk in an otherwise empty office. My appointment, to the best of my memory, was at 4:30 p.m., Robert Vey was not there, but Ms. Vandenburg called City Hall and then told me that he would be

there shortly. The office where I found Ms. Vandenburg was sparsely furnished. The location did, as I remember, provide a spectacular view of a then darkened city and Logan Airport beyond.¹⁶

Sabia stated that Vey told him about "Christmas in Boston", a fundraiser for Kevin White, and asked him if he would like to make a contribution.

Mr. Vey went on to explain the campaign laws to me. He told me that one can give only so much cash and so much in total. Mr. Vey then suggested how I could circumvent the law: "You could have your mother and your children and your brother-in-law and your grandmother give." He also said that "we'll take as much cash as you can give us".

I told him that "I'm not politically active, but would certainly not mind paying for two tickets by check". I distinctly remember Mr. Vey then saying to me "You should get in a little heavier than that". I told him, "That's all I care to do". I departed. As I was getting my coat I noticed another man whom I did not recognize, apparently waiting to see Mr. Vey. I was soon thereafter, sent two tickets to "Christmas in Boston" and paid for them by check in the amount of \$200.¹⁷

In his affidavit to the Commission, Sabia stated that during this time, he was bidding on two contracts with the Boston Parks and Recreation Department. Sabia was low bidder on one contract, had been formally notified of the award and had executed his part of the contract and returned it to the Department. Sabia stated that in December 1974, he was contacted by Frank Clark, an official in the Parks Department with supervisory responsibility for contracts. Clark told Sabia to expect a call from someone concerning the Mayor's fundraiser. Sabia stated that he got the impression that Clark had been forced to call.¹⁸ A couple of days later, a woman did call about the same "Christmas in Boston" fundraiser. Sabia told her he had already bought a couple of tickets through the PFD. She replied that since he had been "successful with the Parks Department" he should buy more. Sabia refused.¹⁹

During February 1975, Sabia learned that it had been noted in the City Record that he had also been awarded the second Parks Department contract. At that point, then, Sabia had executed his part of the first contract and had been awarded the second contract. Shortly thereafter, Sabia received a letter dated February 10, 1975, from Anthony Forgione, Commissioner of Parks and Recreation, stating that all bids on both those contracts had been rejected. Later, they were advertised for bid again.²⁰

On May 15, 1980, Francis Falzarano, another contractor, also testified to Vey's solicitations in the First National Bank Building. Falzarano called Patricia Vandenburg to arrange to see Vey about a project he was doing in Faneuil Hall. Vandenburg said that Vey wanted to see him, too, and arranged for the two to meet in the First National Bank Building office at about six in the evening. In his testimony, Falzarano described the same office layout reported by Vandenburg and Sabia.²¹

Falzarano saw Vey, who said there was going to be a fundraiser for Kevin White at \$100 per ticket and that he was putting Falzarano down for ten tickets since Falzarano did a lot of work for the City. Falzarano told Vey that he could not afford to contribute that year. Vey seemingly accepted Falzarano's refusal, and they proceeded to discuss Falzarano's problems at Faneuil Hall. However, Falzarano stated that since that time he has gotten no work with the City of Boston.²²

Finally, Bradley Sack, a contract employee of the PFD and a personal friend of Vey's stated in an interview with the Commission that in 1974 he received a number of calls from people with PFD contracts who complained about being asked to make contributions. He spoke to Vey about these calls and Vey replied that politics would not be discussed in the office anymore, but would be handled elsewhere. In his interview, Sack confirmed Vey's use of the First National Bank Building office. After his discussion with Vey, Sack wanted to see him on another matter. He was told that Vey was too busy, that he would have to make an appointment to see him at the First National Bank Building, and that he could have only 10 or 15 minutes of Vey's time. He made the appointment and later met with Vey at the same office described by the other witnesses.²³

Much of Vey's fundraising activity, both with Masiello and in the First National Bank Building office, was illegal. It is apparent that Vey knew the activities were illegal since Michael Sabia testified that Vey actually outlined the laws on contributions to him when the two met at the First National Bank Building and then went on to suggest ways to circumvent them.

In December 1974, Herbert Gleason, Corporation Counsel of the City of Boston, sent a memo to all department heads outlining the laws on political fundraising.²⁴ Presumably, the idea was to help City employees avoid illegal activities. Vey received this memo, though apparently he did not circulate it through his department since Victor Hagan, Chief Engineer, Stuart Lesser, Chief Architect, and Pat Vandenburg, Vey's assistant, have all testified that they were unaware of the memo²⁵.

Gleason's memo contained nine points, of which Vey's activities apparently violated at least the following six:

Point # 1. Paid employees of the City are prohibited from soliciting campaign contributions. It is clear from the testimony of Masiello, Sabia, Falzarano and Scarpignato that Vey violated this law.

Point # 2. It is illegal for one candidate to receive more than \$1,000 in any year from any one person. While not all of the money Masiello gave to Vey

was originally his own, It all came to Vey from one person. Vey should not have accepted more than \$1,000 from Masiello in one year.

Point # 4. Corporate contributions are illegal, as are contributions from an employee or officer of a corporation on its behalf. The funds that Masiello generated through Charles Theodore originated with the corporation of Masiello & Associates.

Point # 5. Cash contributions must not exceed \$25 per year for any individual.

Point # 6. The true name and address of contributor must accompany his or her contribution.

Point # 8. It is illegal to solicit or receive a contribution in any public building in the Commonwealth. Masiello testified that he gave money to Vey in Vey's office.

The lack of success in obtaining contracts from the PFD experienced by Saoia and Falzarano was in marked contrast to the experience of William Masiello, a more dependable contributor. The two sections below detail the extent to which he was able to profit from the award of design contracts for the Dudley-Harrison Fire Station and the Charles Street Jail/Deer Island projects.

THE DUDLEY-HARRISON FIRE STATION

The Dudley-Harrison Fire Station was designed and constructed under the administration of the Public Facilities Department between 1971 and 1975. The station was planned to meet the needs of the Roxbury community. It was one of a series of similar projects administered by the PFD in local Boston neighborhoods, and was intended to serve as a model for a series of similar projects in other areas of the city. The PFD hoped to use the Dudley-Harrison plans, with minor modifications, for a number of stations and hence worked more closely than usual with the Fire Department (the using agency) to develop a detailed program and specifications to suit the unique needs of a fire station, e.g., the optimal number and placement of fire poles, turning radii of vehicles, etc. The PFD acted as a liaison between the architect and the using agency to make sure that the final plans were suitable for a number of future projects.

An Unusual Designer Selection Procedure

The process of selecting an architect for the project took place during the winter and spring of 1971. In December of 1970, the PFD Director, Robert Kenney, was appointed Director of the Boston Redevelopment Authority and Deputy Director

Robert J. Vey assumed the post of Acting Director. In private testimony before the Special Commission, Vey stated that Kenney had already decided on Masiello & Associates as architect for the Dudley-Harrison Fire Station before leaving the PFD. Vey discussed the project with Kenney, who said he had done all the background research, decided on Masiello & Associates and wanted Vey to proceed with the award of the contract. Vey said he did not recall the basis on which Kenney made his choice.²⁵

William V. Masiello testified that he was chosen for his expertise in fire station design. He pointed out that his firm had already designed two fire stations and was quite capable of doing the Dudley-Harrison project.²⁷ In actuality, the Worcester staff of the Masiello firm did not have experience in designing fire stations. The two fire stations to which Masiello was referring were designed in Masiello's Maryland office by a completely different staff.

In order to understand the way in which the process for awarding the Dudley-Harrison project differed from the usual, it is necessary to explain the way in which contracts for the design and construction of buildings for the City of Boston are generally awarded and administered. Projects are initially conceived by the various City agencies and funding is obtained from the relevant fiscal authorities. The project is then advertised in the City Record by the Public Facilities Department and applications are received. The PFD Director, the Chief Architect and the Chief Engineer next discuss the various applicants as well as other firms which have previously expressed interest in City or County work or with which one of the three is familiar. Generally, these three individuals arrive at a unanimous decision on the architect. In the case of contractors, bids are accepted, and the lowest bidder usually receives the contract.

In the award of both design and construction contracts, the decision of the Public Facilities Department must be approved by the Public Facilities Commission. The PFC consists of three members appointed by the Mayor. It is intended to function as an independent body of review. Contracts and amendments to contracts must also receive the approval of the Finance Commission and the Auditing Department. Finally, all of the PFC's major decisions must be approved by the mayor.

On May 26, 1971, the Public Facilities Commission voted to request authority from Mayor White to bypass the usual procedure of advertising the project in the City Record and then accepting applications. Rather, the PFC sought authority to enter directly into an agreement with Masiello & Associates for architectural services -- schematic designs, drawings, specifications and construction cost

estimates -- for the fire station. In accordance with that vote, Vey wrote to Mayor White on June 2 to convey the request, which White granted.

In his testimony, Vey seemed unaware of the standard PFD procedure of publicly advertising design contracts and accepting applications. Shown his June 2 letter requesting authority to bypass that procedure, Vey could only infer that the process existed:

THE WITNESS: I have to conclude by the fact that we requested a waiver that there must have been some kind of rule that required it [advertisement], but it was never practiced. It was practice always to waive it and to not advertise for our professional services such as architectural contracts.²⁸

An Erroneous Fee Calculation By Vey in Masiello's Favor

The original contract called for payments of \$5,899.50 for schematic drawings and \$7,866 for design development, with \$3,000 reserved for supplementary services. The maximum payments, then, would have been \$16,765.50. On June 27, 1972, however, the PFC voted to increase the amount reserved for supplementary services to \$4,000, bringing the maximum possible payment to \$17,765.50. This was done because unexpected sub-soil conditions had been encountered, necessitating additional test borings.

On October 26, 1972, the PFC voted to request authority from the mayor to bypass the usual advertisement process and instead enter directly into a contract with Masiello & Associates for Phase II of the project: preparation of working drawings and specifications and the supervision of construction. Vey's letter, of the same date, informing the mayor of the PFC's vote, stated that the contract would be for 8.3% of the estimated construction cost of \$600,000, or \$49,800, less previously paid fees of \$13,765, or \$36,035, plus supplemental service fees of \$7,500 for a total of \$43,535. Vey's computations were as follows:

\$600,000	estimated construction cost
x .083	fee percentage
<u>49,800</u>	
<u>-13,765</u>	previously paid fees
<u>36,035</u>	basic fee
<u>+ 7,500</u>	supplemental service fees
<u>\$ 43,535</u>	TOTAL FEES Phase II

However, Vey's letter understated the fees to be paid to the Masiello firm under Phase I by \$4,000.50 in arriving at the Phase II fee. At that time, the firm had received payments of \$5,899.50 for the schematic drawings and of \$4,000 for supplementary services, but was still due to receive \$7,866.00 for design development. Since he had already received the maximum amount possible for supplementary services, Masiello would necessarily receive the full Phase I fee of \$17,765. Therefore, his fee for Phase II should have been \$39,535.

In a letter to Harold Brandes of Masiello & Associates dated November 2, 1972, Vey wrote:

47

As you know, the contract must go through the normal bureaucratic channels and while this process will require a number of weeks before you have a signed contract in hand, we would appreciate it if you would begin work in order to meet our very difficult time schedule.

This reflects Vey's belief that most of the process of awarding the contract would be merely bureaucratic and his confidence that his recommendation would be approved. Mayor White did, in fact, approve the PFC recommendation for Phase II on November 9 and a contract was signed on December 26.

Vey was directly involved in another significant aspect of the Dudley-Harrison design contract. On March 15, 1974, the PFC voted to request the mayor's approval of an increase of \$2,500 in the maximum supplementary services fee in Masiello's Phase II contract. The increase was needed to cover site soils investigation, concrete testing, and testing of structural steel. Again, given the standard PFC procedure, the action was probably taken in response to a recommendation by Vey. It raised the maximum fee to \$46,035. Masiello was eventually paid \$43,438.25; he billed the PFD for only \$7,403.25 of a possible \$10,000 for supplementary services, leaving \$2,596.75 unpaid.

It is unclear whether the understatement of Masiello's fee was a mistake, was due to special circumstances, or was an attempt to disguise Masiello's Phase I fee in order to increase his Phase II fees.

A Phony Change Order to Fund a Political Contribution

The actual construction of the Dudley-Harrison fire house was apparently straightforward, with the exception of one incident which again involved Masiello and Vey. This incident involved a 1974 change order for brick. Masiello stated in private interviews with the Commission that Kenneth Provost, the brick supplier, delivered an excess of brick to the construction site for which the contractor refused to pay. Charles ("Coke") Mezzano, a Provost salesman, contacted Masiello seeking payment for the brick. Masiello then worked out a deal with Provost in which Masiello obtained a change order whereby the City paid for the unused brick and, in exchange, Provost agreed to make a \$1,500 contribution to the White campaign. Masiello says that he did obtain the change order and Provost was paid for the excess brick. However, when it came time to make the contribution, Provost came through with only \$500. Masiello gave this money to Robert Vey in Vey's car in front of the Pier Union Oyster House on Northern Avenue, Boston.²⁹

In their own public testimony before the Commission, Coke Mezzano and his employer, Kenneth Provost, offered somewhat different accounts of the circumstances surrounding the brick change order. According to Mezzano, there was an over-order of brick by the contractor, who refused to pay for the unused brick. Provost was upset and asked Mezzano to contact Masiello about it, which Mezzano did. Masiello said he would get back to Provost at a later date. Mezzano later learned from Provost that Masiello had offered to get a change order allowing payment for the extra brick if Provost would make a \$500 contribution to Kevin White. This Provost agreed to do and, in fact, told Mezzano during late 1979 or 1980 that he had done it. Mezzano said he was not aware of the amount of the over-order.³⁰

Provost, in his testimony, largely confirmed the Mezzano version of the incident. He said he received an order for bricks, purchased and delivered them, but perhaps 30% were not used. There was some dispute as to whether Provost should be paid for this unused brick, about \$2,400 worth. Masiello asked Provost whether he would make a \$500 campaign contribution to White if he (Masiello) obtained a change order to pay for the extra brick. Provost said he agreed to this arrangement.³¹

Provost's testimony differs, however, from Mezzano's concerning the actual contribution. He stated that when it came time to make the contribution he offered to write a check. However, Masiello said that he could take only cash, which Provost did not have available at the time. Provost then testified as follows as to the disposition of the money:

- Q. And did you make the \$500 campaign contribution for Kevin White's campaign?
- A. I think I did.
- Q. Who did you give the \$500 to?
- A. I didn't give it to anyone.
- Q. What did you do with the \$500?
- A. At first he wanted money and I said I would make a check out, then he decided he couldn't use a check and he wanted funds, and I didn't have the funds so we had an argument on that and I think he received the money, I am not sure.
- Q. Based on your recollection as to discussions with Mr. Masiello about payment by check, does that mean that the payment you made was made in cash?
- A. I don't know. If it were not check I would assume that would be the manner.
- Q. It would have to be in cash?
- A. I would assume so, yes.

Q. To whom did you make the payment?

A. I didn't make the payment that I can recollect or remember.³²

Q. So, you're saying you don't remember the exact details of the circumstances?

A. No. I told you this in private hearings.

Q. Well, Mr. Provost, we can end it if you agree you must have made the contribution in cash, that's what you said this morning and in a private hearing.

A. I must have, but I don't remember the exact date and time if I did. We had an argument over that.

Q. Mr. Provost, I am totally confused. Can you hear me?

A. Yes, now.

Q. I again say I must admit I am totally confused. I thought a moment ago in response to my question that you said to me that when you were asked for a contribution and you offered to make it by check and was told the check was unacceptable, and then you said you did not have funds and therefore did not make the contribution in cash, I take it then at some subsequent moment you must have had acceptable funds to make the contribution?

A. I honestly don't remember how it was done, if in fact it were done.

Q. But, you believe you did make a cash contribution at some point in order to settle this dispute?

A. I could have, yes.³³

The conflict in the accounts centers on who was responsible for the problems with the brick and on the "deal" that Masiello and Provost struck. Masiello believed Provost over-delivered and felt he was doing Provost a favor by obtaining the change order. He said Provost agreed to a \$1,500 contribution, but later reneged. Provost stated that the contractor was at fault and felt that he (Provost) should have been paid in any case. He felt that Masiello used the change order to pressure him to make a \$500 contribution (though he is vague about actually making it). While Mezzano and Provost made no mention of a \$1,500 figure, they agreed with Masiello that the final amount of the contribution was \$500.

According to Stuart Lesser, the completed Dudley-Harrison project turned out quite well. The program and layout were "fairly successful," and as was the original intent, this design was used with slight modification for several subsequent fire stations. The increased PFD involvement and the more detailed specifications probably played a large role in making the project successful in this respect.³⁴

However, the Commission found a series of questionable actions by several parties in the planning and design of the Dudley-Harrison project. The selection

of Masiello as architect and its proximity to his contributions to the white campaign suggest a connection between political contributions and the award of the contract. The understatement of Masiello's Phase I fee and the resultant overpayment on Phase II are questionable. The Brick incident apparently involved a completely fraudulent Change Order by which the City funded one of Masiello's contribution to Vey.

CHARLES STREET JAIL/DEER ISLAND PROJECT

On June 20, 1973, Federal Court Judge W. Arthur Garrity ruled that conditions at the Suffolk County Jail at Charles Street, particularly those in pretrial detention areas, were unconstitutional.' He ordered that the jail either be renovated or shut down by 1974. To this date, seven years, several architects and design fees into six figures later, nothing has been done to better the physical conditions.

The Commission's investigation into the Charles Street Jail project centered on the award of study and design contracts to Masiello & Associates, and raised serious questions about the propriety of those awards. Beyond that, it has raised doubts about the sincerity of the City's efforts to comply with Judge Garrity's order. It appears that the contracts were awarded on the basis of political favoritism or corruption. It appears that the City was more interested in keeping Judge Garrity occupied with complicated proposals and counter-proposals (in the hope of avoiding major expenditures) than in correcting the unconstitutional conditions at Charles Street.

Another Unusual Selection Procedure

Shortly after entry of Judge Garrity's order, the PFD began to consider the selection of an architect. At that point, the PFD envisioned a renovation of the existing correctional facilities on Deer Island rather than those at Charles Street. Using Deer Island was preferred because it would have allowed the City to sell the Charles Street property and collect taxes on it in the future.

In a private hearing before the Commission on April 23, 1980, Robert Vey testified on the selection of Masiello & Associates for the Deer Island feasibility study contract. He said that after the court order came down, he sent a PFD employee, Joseph McBrine, over to the BBC to get the names of some architects with experience in jail design. McBrine came back with three names, one of them Masiello & Associates; Vey did not remember the others specifically but said they might have been Samuel Glaser and Desmond & Lord.³⁵

Vey then sent Daniel Hurley, also of this PFD staff, to Worcester to visit Masiello's offices and to view the Worcester County Jail described by Masiello. Hurley is an engineer, and at the time of the trip had no experience in architecture. Furthermore, he had no experience in the design of correctional facilities; prior to that trip, the only other jail Hurley had seen was the Charles Street Jail, which had been ruled unconstitutional.

Hurley testified that he travelled to Worcester and visited Masiello's offices and the jail. The jail had not been officially opened and was not occupied. Hurley spent about an hour and a half there. He stated that he received a generally favorable impression.³⁶

Here Hurley's inexperience should be remembered. Eliot Rothman, an architect involved in the Charles Street Jail litigation on the side of the plaintiffs (the inmates), who later did most of the program work for Masiello, called the Worcester County Jail the most regressive facility he had ever seen. It is possible, as Rothman noted, that Hurley (or others) might have preferred a regressive facility. It is more likely, however, that Hurley's inexperience, combined with the fact that the jail was new and unoccupied, led him to a favorable impression.)³⁷

Hurley testified that he reported on his visit only to Robert Vey and that he did so orally. He did not report to Stuart Lesser or to Victor Hagan. After reporting to Vey, Hurley had nothing more to do with the selection of Masiello. Hurley further testified that he did not hear of the award until after the PFC had formally voted.³⁸

Apparently, this was the only research done into any of the firms suggested to Joseph McBrine by the BBC. Vey stated that he did not know of any study made of the work of either Samuel Glaser or Desmond & Lord before Masiello & Associates was selected. Vey characterized the selection process as follows:

Subsequent to his [McBrine's] coming back [from the BBC], I know I discussed it with my chief architect and my chief engineer, and we further sent the man that was in charge of our maintenance repair program out to look at the facilities that he [Masiello] had designed and been built, and as I recall he came back with a favorable report. So, I would say that the chief architect, chief engineer, the gentleman who ran our maintenance program and myself all agreed that Masiello should be awarded the contract to replace the Charles St. Jail.³⁹

In fact, Hurley, the head of the maintenance program, had no role in the decision as such; he simply made his report to Vey. Victor Hagan flatly denied in public testimony before the Commission that he had any role whatsoever in the selection of Masiello for that contract. He also stated that he knew nothing of Hurley's trip to Worcester at that time. He did not find out about it until sometime in 1978 when consideration was being given to cancelling Masiello's

contracts with the City.⁴⁰ Stuart Lesser testified that he was not at all involved in the selection of Masiello either. Like Hagan, he did not hear that firms were being considered or that Masiello had been chosen until after the PFC vote. Lesser did not learn of Hurley's trip to Worcester until the project was well under way.⁴¹

About a month after the award of the Deer Island contract and three months before its execution, Masiello hired a consultant, Eliot Rothman, to do the program (population study/space needs/ feasibility). Rothman had been involved in the jail litigation and was interested in bettering the conditions at Charles Street. He stated that when he heard that Masiello had been selected for the study contract he went to speak with Peter Scarpignato, Assistant to the Director, and Emily Lloyd, Senior Urban Planner, both of the PFD, and convinced them that he could do an appropriate program. Subsequently, he was contacted and hired by Masiello.⁴²

The employment of Rothman seems to have been based on concern within the PFD about the ability of Masiello Associates to do the program. Masiello viewed Rothman as a "necessary evil" and would have preferred not to use him. Apparently, though, he was convinced or pressured to do so by the PFD. Scarpignato said he had "some input" into the choice of Rothman, but was not ultimately responsible. Vey denied having had any role at all. Normally, the choice of a consultant had to be approved by the PFC, but in this case there is no written record of such approval.

Similar circumstances surrounded the hiring of a second architectural consultant, Chia Ming Sze. In an interview with Commission staff, Chia claimed that he was first introduced to the project by his friend Stuart Lesser. Lesser, he said, initially tried to secure for him the design portion of the job. Sometime late in 1974, after Rothman had left the project, Chia submitted to the PFD a proposal under which he would do the schematic work for some \$55,000 or about \$23,000 less than Masiello was to receive.

Chia stated in the interview that the PFD refused to deal with him directly. The PFD maintained that it would be too difficult and time consuming to amend the contract, since an amendment would have to be approved by the PFC and the mayor. This reaction, Chia told the Special Commission, was a ruse. He believed the PFD would not deal with him since to do so would constitute a public acknowledgement that Masiello was not qualified and should not have been selected. He pointed out that, as in Rothman's case, his presence on the project was never approved by the PFC. The PFD instructed him never to appear at a meeting on the project without a representative of Masiello & Associates. Finally, he noted that his

seal was removed from all drawings he did on the project and replaced by Masiello's.⁴³

Rothman claims to have done virtually all of the work on Part I of the contract including the population studies and the final program. Chia claims to have done 90% of the work on Part II. Stuart Lesser confirmed both assertions in his public testimony before the Commission.

Q. Now, for part I of the Charles Street Jail project Eliot and Martha Rothman were hired as architects to work alongside Masiello & Associates on that part. Is that true?

A. Yes, it is.

Q. And is it also true that the Rothmans did practically all the work on part I of that project?

A. I was not heavily involved in the programming efforts, but I understood the documents that became the program for the Charles Street Jail was primarily done by the Rothmans.⁴⁴

A. Okay. The work that was done, the bulk of the work that Chia-Ming Sze did was the design of the facility for Charles Street, and he was involved in, I believe, and did the bulk of that work for the preliminary design work.⁴⁵

Peter Scarpignato stated in an interview with Commission staff that it is not unusual for someone other than the architect to do the program on a specialized project such as a jail. But he admitted that it was unusual to bring in another firm to do the design work that Chia did and that this made the original selection of Masiello appear "a little suspicious."⁴⁶ Chia stated that the PFD needed someone actually to do the work on the project since they knew Masiello lacked the necessary "design power".⁴⁷ Stuart Lesser admitted, too, that the PFD knew that Masiello was lacking in design expertise.⁴⁸

The Connection Between Contributions and Contracts

Masiello asserted in his testimony that there was no direct connection between his fundraising and the award of the Charles Street Jail contract. He states that he did not begin fundraising until after the contract was awarded and that the award was not made on the basis of a specific agreement that he would raise campaign funds if awarded the contract.

However Masiello characterizes the arrangement, the facts of his fundraising activity for Robert Vey, and Vey's role in awarding new contracts and amendments to the existing contract after the fundraising began, strongly suggest a connection, if not directly stated, at least understood by the two. The first jail contract, for planning and program work, was awarded in July 1973, though it was not executed until December. Masiello testified that he began to participate

in fundraising activities for Robert Vey in connection with a fundraising event held in December 1973.

On the first jail contract, the Masiello firm was originally to receive a fee of \$126,360. However, that amount was increased by almost 300 percent (after, by Masiello's testimony, he began raising cash contributions for Robert Vey) by amendments to the first contract and by new contracts which were subsequently amended. On June 4, 1975, the PFC approved an amendment to the first contract adding \$34,040 to Masiello's fees. On that same day, the PFC awarded Masiello a second jail contract -- for design work for a jail at a different location. That contract was executed on September 19, 1975; the architect's fees were set at \$310,250. The PFC amended that contract on January 16, 1976, raising the architect's fees by \$26,000. As Director of the PFD, Robert Vey recommended each of these actions to the PFC. Therefore, the total fees due under Masiello contracts ultimately reached almost \$500,000 -- more than two-thirds of that amount after Masiello started raising campaign funds for Vey.

Keeping The City "Out of the Prison Business"

Almost immediately after awarding the contract for studies of Deer Island, the PFC voted to amend the contract to allow work to proceed on the Charles Street site. This occurred in November 1973, before the contract had even been executed. On April 4, 1974, Eliot Rothman completed a study which confirmed this shift of focus. After comparing the two sites, Rothman recommended Charles Street. Among the reasons he cited were ease of access for lawyers and relatives of inmates, and lower operating costs.

There was, of course, opposition from residents in the areas surrounding both sites, and in the case of Charles Street from Massachusetts General Hospital which apparently wanted the site for its own use. Such local opposition was strongest around Deer Island. This led to a brief study in December 1974 of another site near North Station. The study (two pages, one drawing) done largely by Chia Ming Sze (under Masiello) also recommended Charles Street as the most favorable site. The scale of this study casts doubt that the PFD was ever serious about the North Station site. At Vey's request, the PFC voted to award Masiello some \$2,400 in additional compensation for the two-page study.

Also in early 1975, when the design work on Charles Street was about 35% complete (ready to go into working drawings), Vey called Masiello into his office and told him to change his focus back to Deer Island. As Masiello noted, "he [Vey] called me into his office and he indicated to me that the City of Boston wanted to be out of the prison business."⁴⁹ By this time, Masiello was fully

aware of the difficulties surrounding each site. Specifically, he knew that no jail would ever open at Deer Island. Masiello was asked:

Q. And that in essence this was an exercise in futility because you and Mr. Vey knew that you were not going to build at least the Deer Island facility. You could not build there?

A. It would not have been built on Deer Island, not with the opposition that they were confronted with.

Q. You knew that when you started out to make the plans?

A. I knew it.

Q. You had discussed it with Mr. Vey?

A. I am sure I did.⁵⁰

On June 4, 1975, at Vey's recommendation, the PFC voted to award to Masiello & Associates a \$310,250 contract for the design of a new facility at Charles Street. On the same day, the PFC voted to amend that contract, adding \$34,040 for schematic and design development for Deer Island.

In light of the above discussion, this decision seems irresponsible. The PFD was already aware of Masiello's inadequacies; Rothman had to be hired to do the program and Chia Ming Sze to do the design work. It is possible, as Lesser has stated in private interviews, that Masiello would have done a good job at construction supervision. This, however, amounts to only about 25% of a project. Given the knowledge of Masiello's inadequate design capabilities, it would seem inconceivable that the PFD would award Masiello another design contract for so prominent a site as Charles Street which Lesser called the "gateway into the City of Boston."⁵¹ This was almost certainly Robert Vey's doing. He made the recommendation to the PFC and the PFC, which had never been asked to approve Rothman and Chia as consultants for the project, may well have been unaware of Masiello's inadequacies.

Overpayment of Design Fees Through Padded Time Records

Masiello's fees under contracts with the PFD were calculated as a percentage of construction cost. On state contracts, fees are payable as specified phases of the contract are completed. In the case of the Suffolk County contracts, however, the architect can bill on a per diem basis up to the maximum total fee as time is spent. To take advantage of that system, Masiello had his employees working on the jail contracts record more time than they actually worked on the early phases of a project in order to obtain his fees sooner. That this practice of "padding" time sheets was used has been testified to by Audrey Rawson, Richard Brown and Joseph Miller, all former Masiello employees.⁵²

A. There were occasions when we had a job that we were getting a per diem for which meant we were getting paid by the hour rather than by a percentage of the fee, and Bill would tell

them that they should have some hours so that we could get X number of dollars or that we should bill heavy in the beginning of the job rather than later in the job when we wouldn't be working on it as much and if people didn't have as many hours as he thought that we should have, he would tell me to give them [the time sheets] back to them and ask them to put more hours against a particular job.

Q. Can you name any jobs that were on a per diem basis that you just testified to?

A. The Charles Street Jail was one that -- it wasn't on a per diem basis. That may have been when we were doing the preliminary work or something, but I remember that he did have something changed on the time sheets on the Charles Street Jail. I can't think of any others. I am sure that there were others.⁵³

Q. Because that was preliminary work, work being done at an early stage of the project?

A. Yes.

Q. As opposed to work being done while the project was under construction under contract?

A. Or in the design stage. This was before we have an estimated construction cost.

Q. The work being done on the Charles Street Jail was at what you would refer to as a preliminary stage?

A. Not totally, no. We did have an ECC. I am talking about the very beginning, the very first time that we can collect on a contract, that is what it is based on. But, the Charles Street Jail, we did go into schematics and we did go into preliminary, and we did, I think, even have working drawings, but it went beyond that stage, but this is the way it was --

Q. Your testimony is that there was a stage during the Charles Street Jail project during which the amount that the firm could be paid for depended on the amount of time spent on that project?

A. That is correct.

Q. And your testimony is that at that stage of the project Bill Masiello gave instructions that as much time as possible should be billed to that project?

A. Yes.⁵⁴

In the case of completed contracts, this practice affected only the timing of the fee payments, not the total amount. However, on contracts which were not completed, the total contract amount was only an upper limit. Total payments depended finally on the time billed by the architect. Thus, particularly in the case of the second jail contract which was cancelled well before completion, Masiello's practice of padding his time sheets early in the project probably resulted in an overpayment in terms of the work actually done up to the time of cancellation.

while Masiello always sought to obtain his fees as early as possible, he was extremely slow about paying his consultants. At least four of the consultants involved with Masiello on the jail contracts had difficulty securing payment.

Eliot Rothman has said that he had no difficulties with payment for the first part of his work, but thereafter received nothing. He finally refused to submit his final report until he received his full payment. Chia Ming Sze, too, had difficulty with payments. He states that when he left the project in 1976 he was owed over \$12,000. He had no luck trying to pressure Masiello or Vey for payment. Finally, he obtained, through Boston Corporation Counsel Herbert Gleason, a stop order on all payments to Masiello until he was paid himself. Some six to eight months later he was finally paid.

One other aspect of Masiello's jail contracts deserves mention. On January 19, 1977, the PFC approved an amendment to Masiello's first jail contract. This contract with its first amendment was for studies pertaining to both the Deer Island and Charles Street sites. Fees were based on the estimated construction cost. Normally, the estimated construction cost is adjusted during the second phase of a contract when the scope of the project is better known. However, by early 1977, it was clear that the second phase of the contract would not be undertaken; nevertheless, the PFD decided to revise the estimated construction cost at that time. The figure was raised from \$3 million to \$5.6 million. This had the effect of raising Masiello's fee by some \$41,000. It was further decided to raise the supplementary services fee by \$15,000 to cover additional work which the PFD had requested Masiello do.

During early 1977, when the City was again revising its plans for the jail, Masiello's name had arisen publicly in connection with the DiCarlo/Mackenzie case and the PFD had begun to look for another architect for the project. In this setting, the proposed amendment to Masiello's first contract, paying him \$56,000, caused some controversy. In particular, the Boston Finance Commission opposed the amendment and recommended that Mayor White withhold approval. The FinCom was particularly concerned about the circumstances under which the contract was awarded and about how much work was in fact done and recommended an investigation. That recommendation was made in March 1977 and was reiterated in November 1977.

Eventually, however, the amendment was executed; in October 1979, it was approved by the Contracts Department and the Auditing Department. On November 21, 1979, it was signed by Donald Manson, Director of the PFD, and William Masiello. Payment of \$56,000 will conclude the first contract; Masiello's fees will total about \$205,000 depending on how much of the final amendment is actually paid. The second contract was cancelled by Manson on June 14, 1978 when Masiello had received about \$162,000.

The Charles Street and Deer Island projects were always in a sense mutually exclusive. Peter Scarpignato has said as much in private interviews.⁵⁵ Both projects were intended to discharge the City's duties under Judge Garrity's order. One or the other would suffice; both would not be carried to completion. The constant shifts in emphasis, from Deer Island under the first contract to Charles Street under its first amendment, back to Deer Island in early 1975 and then the simultaneous work on both sites under the second contract and its amendment, support Masiello's contention that the City of Boston was seeking to delay; if possible, to avoid, construction.

Chia Ming Sze largely agrees with Masiello's assessment that the intent of the jail projects was to keep Judge Garrity occupied with proposals in order to avoid large expenditures and "get the City out of the prison business" by forcing the Court to order a state take-over. Chia told the Commission's interviewers that the whole jail project was farcical from the beginning. He said that it was begun in response to a court order and the whole point thereafter was to deceive the judge. Chia added that Judge Garrity had little technical understanding and could not evaluate how much work had actually been done. According to Chia, Vey used Masiello's work to show the judge the City was serious, but, in fact, little was being done.⁵⁶

Hagan and Lesser have testified that they were unaware of any conscious effort by the City to delay the jail project.⁵⁷ Robert Vey refused to answer questions as to whether Mayor White had ever told him that the City had no intention of using its funds to build or maintain a new jail. He also refused to say whether he had met with Masiello and told him that the City wanted out of the prison business, as Masiello had testified:

... so we knew deep down that there was no way that a prison could go onto Deer Island. He [Vey] knew it and I knew it, but I became part of his scheme to take the City of Boston out of the prison business.⁵⁸

What we did, we just went through a series of exercises and the whole ploy behind it was to take the City of Boston out of the prison business.⁵⁹

Given all of the factors which have been discussed here, it is nearly impossible to conclude that the City was attempting in good faith to comply with Judge Garrity's order. As a result of the Charles Street/Deer Island delay tactics, the inmates have spent seven more years in unconstitutional conditions and the taxpayers have footed a bill of over \$400,000. Masiello's contract was terminated in 1978 and, according to James Langin, the PFD's current chief architect for the project, none of the work done by Masiello, Rothman and Chia

Ming Sze will ever be used. The City has again changed its plans for complying with the court order and it will be at least another year and, presumably more, before the first stone is even turned. In the meantime, conditions at Charles Street remain unchanged.

DESIGNING A SUMMER HOME FOR SHERIFF EISENSTADT

Through various meetings and hearings concerning the Charles Street Jail project, William Masiello became acquainted with the Sheriff of Suffolk County, Thomas Eisenstadt, and learned that Eisenstadt had a piece of property on Cape Cod on which he wanted to build.

Eisenstadt, as Sheriff, would be the chief user of any new jail in Suffolk County. He was routinely consulted in the planning and design process. As a party to the litigation before Judge Garrity, he had a say in court about the approval of architectural work and in the decision whether to keep the Masiello firm on the job. At the time Eisenstadt was involved in those ways, in the Charles Street project, Masiello asked one of his employees, Joseph Miller, to discuss with Eisenstadt his desire for the Cape Cod property. Miller arranged a meeting with Mr. and Mrs. Eisenstadt at their house to discuss the site and what they wanted to do with it.

Miller stated, in his public testimony before the Special Commission, that the Eisenstadts described to him the site on the Cape and the existing boathouse there. They told him they wanted to remove the boathouse, build on its foundation, and add a two-car garage. Miller described the house they envisioned as "a very large, assuming home, six fireplaces, sort of a tri-level house, deck that extended out over the ocean."⁶⁰

Subsequently, Miller, Masiello and Raymond Allard (Masiello's chief architect) traveled to the Cape to view the property, make measurements, take photographs, etc.⁶¹ After this trip, Miller began to prepare sketches and preliminary plans. He stated that he met again with the Eisenstadts at their home to discuss those drawings and to make sure he was moving in the right direction. Eisenstadt told Miller that he was very pleased with the sketches; they were exactly what he was looking for.⁶²

A "Large, Assuming Home"

Miller then proceeded to draft more comprehensive plans and to build a model. At a third meeting with the Eisenstadts, Miller presented his work. In his testimony, he described the house as a:

... large, assuming nome ... a two story section, a single story section along the side, tri-level, approximately two thousand two hundred square feet in scope. Approximately six fire places. Open stairways leading to a loft area. A library facility. Two-car angle garage, portico entryways, sunken livingroom, large deck over extending the ocean seawall.⁶³

He stated that at this third meeting he went over the plans and the model in great detail and that after doing so and answering a few questions the Eisenstadts understood the plans "full well".⁶⁴

Most of the work on the Eisenstadt house was done by Miller, who said he spent about two weeks on the plans. He estimated the market value of the work done for Eisenstadt at about \$3000. Raymond Allard also testified that Miller spent "a couple of weeks" on the project and stated that he spent about twenty or thirty hours on the house himself.⁶⁵

In his testimony of May 12, 1980, Masiello placed that value at about \$600. However, Masiello was projecting solely from Miller's salary, not from the higher rate at which Miller's time would be billed. Also, he did not consider Allard's time or his own. Masiello also disputed the assertion that plans were actually done, maintaining instead that "there were never any plans developed.... There are no plans. To the best of my knowledge, there were never any plans."⁶⁶

The testimony of both Miller and Allard, however, leaves no doubt that plans were actually done. Miller's model was made an exhibit at his public hearing before the Commission on April 23, 1980. Further corroboration was provided by Richard Brown, President of Masiello & Associates after Allard's departure. Brown testified before the Commission on April 28, 1980 that Miller did both design and working drawings for the Eisenstadt house. He stated that Miller at one point "took the drawings from the drawer and actually laid them out and showed them to me."⁶⁷

At a private hearing on November 9, 1979, Thomas Eisenstadt said he did not recall ever receiving anything of value from Masiello. He did not recall discussing architectural services or designs for a home or for renovations. He stated that he did not take Masiello or his employees to the site on the Cape and that he did not know if they went on their own. He testified that immediately after purchasing the property, he discovered that it "was not buildable". He stated that, to the best of his knowledge, no design work at all was done for him in connection with that piece of property.⁶⁸

The testimony of Masiello, Miller, Allard and Brown is that a home was, in fact, designed for Eisenstadt and that Eisenstadt knew about it at the time. Miller further testified to three different occasions on which he discussed the plans and the property with both of the Eisenstadts.

Both Miller and Allard testified that Eisenstadt did not pay for Miller's design work.⁶⁹ However, the Masiello firm did not absorb the cost itself and was still able to secure compensation. It billed Miller's time to the Charles Street Jail project, with the result that the taxpayers paid for the design work on the Sheriff's summer home. Masiello routinely took advantage of PFD billing procedures by "padding" his firm's time sheets early in a project in order to obtain his fees sooner. For instance, the Commission heard evidence that Miller submitted his time sheet for the week ending December 13, 1973 to Audrey Rawson. Among other things, Miller spent 24 hours on the Charles Street Jail project and 13.5 hours on the "Sheriff's Beach House." At Masiello's instruction, Rawson returned the time sheet to Miller. Masiello wanted him to delete the "Sheriff's Beach House" entry and to add those hours to the Charles Street Jail project. The altered time sheet showed 37.5 hours spent on the jail.⁷⁰

In the case of completed projects, such padding would affect only the timing of payments; the overall fee would still be based on construction costs. However, since the Charles Street Jail project was not completed, this padding inflated Masiello's fees. Specifically, it meant that the City of Boston paid for the design of Sheriff Eisenstadt's beach house.

CONCLUSION

The Commission heard evidence that William Masiello engaged illegally in raising thousands of dollars for the political campaigns of Mayor Kevin White of Boston; that he did so at the behest of Robert J. Vey, Director of the Boston Public Facilities Department; and that political contributions were also expected of others doing business with the PFD. Those who declined to contribute failed to obtain further work.

Even Masiello conceded in his testimony that contributions and contracts were connected in Boston; the fundraising was at least the "door opener" to work for the PFD. Then, contracts were awarded without following standard procedures and the PFD made errors in fee calculations which favored the contributing architect.

The Commission also heard evidence that the taxpayers of Suffolk County helped to foot the bill for the political contributions demanded of Masiello by such devices as phony change orders, fee overpayments, and padded time sheets. The people of Boston also contributed part of the cost of free architectural work for the Sheriff of Suffolk County when the Masiello firm designed a luxurious summer home for him while working on a major contract for the County.

What did the County receive in return for the \$427,557.61 in design fees paid to Masiello & Associates on the Dudley-Harrison and Charles Street/Deer Island contracts? One usable firehouse, several sets of plans for jails which will never be used, one model of an "assuming summer home," and years of progress in the apparent efforts of County officials to stall Judge Garrity and "get the City out of the prison business."

DUDLEY-HARRISON FIRE STATION

Design Contract: 07/26/71 \$16,765.50
 Amendment: 08/07/72 \$ 1,000.00
 Total Contract: \$17,765.50

Total paid to M&A: \$17,765.50
 Balance: -0-

Construction supervision: 12/26/72 \$43,535.00

Amendment: 05/13/74 \$ 2,500.00

Total Contract: \$46,035.00

Total Paid to M&A: \$43,438.25

Balance: \$ 2,596.75

TOTAL BOTH CONTRACTS: \$63,800.50

TOTAL PAID TO M&A: \$61,203.75

TOTAL BALANCE: \$ 2,596.75

FEE SCHEDULE: DUDLEY HARRISON FIRE STATION

Payments to Masiello and Associates on the Dudley-Harrison Fire Station:

08/1/72	\$ 5,899.50	-Schematic drawings
09/14/72	4,000.00	-Supplementary Services
02/12/73	<u>7,866.00</u>	-Design Development

TOTAL PHASE I PAYMENTS \$17,765.50

03/01/73 \$21,621.00

05/02/73 5,405.25

02/27/74 4,324.20

07/22/74 1,351.31

08/19/74 1,351.31

11/06/74 1,081.05

12/26/74 2,462.00

01/17/75 4,941.25

01/29/75 540.52

TOTAL PHASE II PAYMENTS \$43,438.25

SC - 2421

Study Contract:	12/11/73	<u>\$126,360.00</u>
Amendment:	06/04/75	<u>\$ 34,040.00</u>
Amendment:	proposed: 01/19/77	
	approved: 11/21/79	<u>\$ 56,154.00</u>
TOTAL CONTRACT:		<u>\$216,554.00</u>
Amount paid to M&A		<u>\$208,495.72</u>
Balance		<u>\$ 8,058.28</u>

SC - 1962

Design Contract:	09/19/75	<u>\$310,250.00</u>
Amendment:	01/16/76	<u>\$ 26,000.00</u>
TOTAL CONTRACT:		<u>\$336,250.00</u>
Amount paid to M&A		<u>\$157,858.14</u>
Balance:		<u>\$178,391.86</u>
TOTAL BOTH CONTRACTS:		<u>\$552,804.00</u>
TOTAL PAID TO M&A		<u>\$366,353.86</u>
TOTAL BALANCE:		<u>\$186,450.14</u>

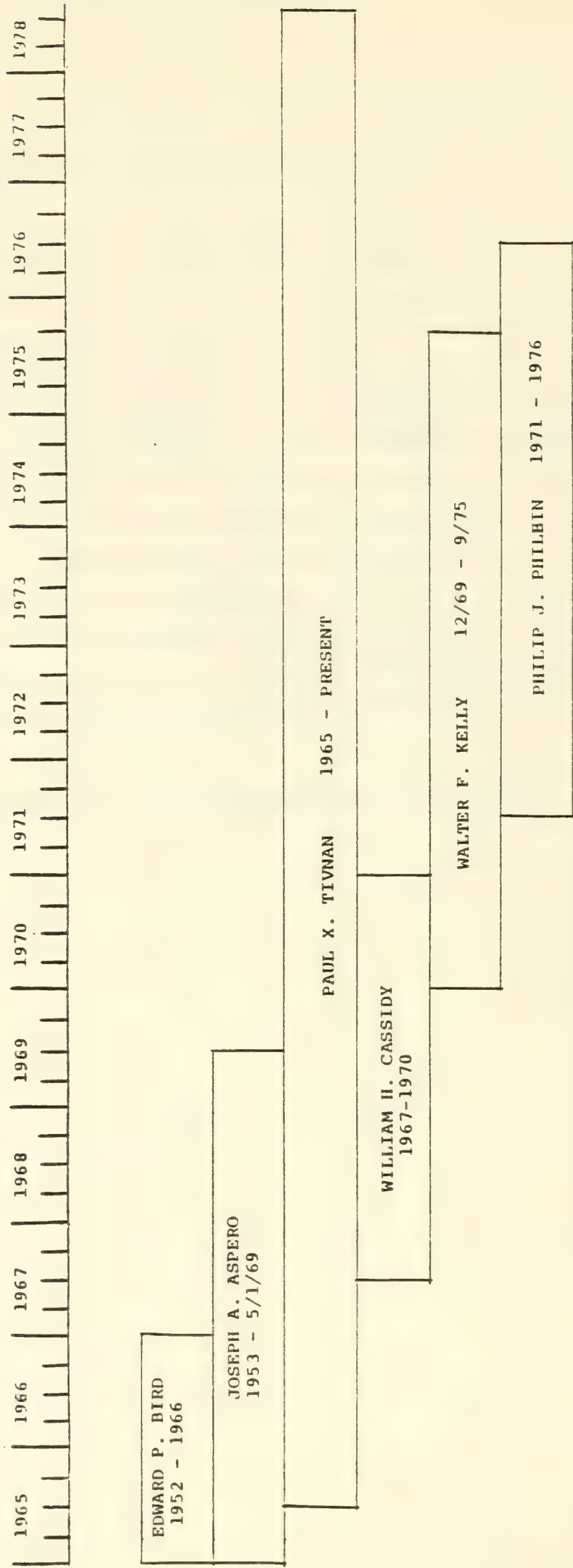
THE MASIELLO FIRM'S SERIES OF CONTRACTS WITH WORCESTER COUNTY

Worcester County is administered by three county Commissioners elected by the county at large to four-year terms.* Until 1974, the activities of the Commissioners, included wide-ranging responsibilities for public construction projects. For such projects the Commissioners selected the architect and the general contractor, supervised the design and construction phases, approved all payments and change orders, and signed all contracts. They also assessed the need for a project, determined its program and siting, and obtained authorization for funding from the Massachusetts General Court.

However, they did not have complete control of construction projects. Sometimes a local body determined the need for a project and the potential site and then approached its state representative for aid in obtaining funding. The Commissioners' role would begin at this stage, perhaps in making presentations before the legislature to justify the bond authorization for the project.

*Chart one shows the names and terms in office of all Commissioners between 1965 and 1975.

CHART 1
 WORCESTER COUNTY
 COMMISSIONERS



After the legislature approved the bond authorization, the Commissioners had virtually complete control over the project. Sometimes the Commissioners awarded the design contract after interviews of various firms, but in most cases they had already decided on the architect before the funding came through. As a practical matter, the Commissioners then left most of the supervision of the project to the architect.

In 1971, county building projects were brought under the jurisdiction of various state agencies, thereby diminishing the authority of the county Commissioners.¹ In particular, the Secretary of Administration and Finance was now responsible for selecting the architect from a list of three qualified firms provided by the Designer Selection Board. In addition, the Bureau of Building Construction (as well as the architect) now supervised design, construction and the various bidding processes (e.g., general contractor, supply contracts, etc.).

As noted above, courthouses comprised most of Worcester County's building projects during the last 15 years. County Commissioner Philip Philbin described the situation that existed prior to the start of the Commissioners courthouse building program in 1966 in a private hearing before the Special Commission on November 30, 1979:

we were a county with our courthouses above drugstores or above police stations at that time, you know, ten or fifteen years ago and that was our set up. We had, you know, in Clinton we had a courthouse half the size of this room, and you'd have 30 or 40 cases in there a day. They'd be standing out in the street and sitting in the park and that was pretty much the case --you know, once this increase in criminal volume in the courts developed in the last 15 or 20 years it just got unmanageable.²

Another Commissioner, Paul Tivnan, offered a somewhat different view of the courthouse projects. He felt that after the Milford project was approved in 1965, a sort of bandwagon effect took over, with various legislators seeking also "to do something for their districts."³

In private interviews and in public testimony before the Commission on April 1, 1980, Frank Masiello described how his firm was able to win seven of the eight Worcester County design contracts awarded during this period.

Masiello stated that he first became interested in Worcester County projects in 1963 or 1964. Specifically, he had heard through the Dodge Reports that the County Commissioners were seeking funding for a new county jail. Masiello was skeptical, at that time, that his firm could win the design contract award; it was his impression that three or four other firms, each of which had strong

¹Seven of the Worcester County projects, all designed by the Masiello firm, are shown in Chart Two; the only other project was the Clinton Courthouse designed by C.W. Buckley. Facts about the Masiello projects are summarized in tables at the end of this chapter.

political connections Masiello testified publicly on April 1, 1980; dominated county work:⁴

well, it appeared that certain firms were getting the majority of the projects coming out of the Worcester County given by the Board of County Commissioners, and I had an awareness or I was made aware of the fact that it probably existed that political contributions might have been a consideration for those contracts awarded to those other firms.

Q: To your knowledge did it also come to the attention of the County Commissioners that your interest in county work might also involve the consideration or the willingness to consider political contributions?

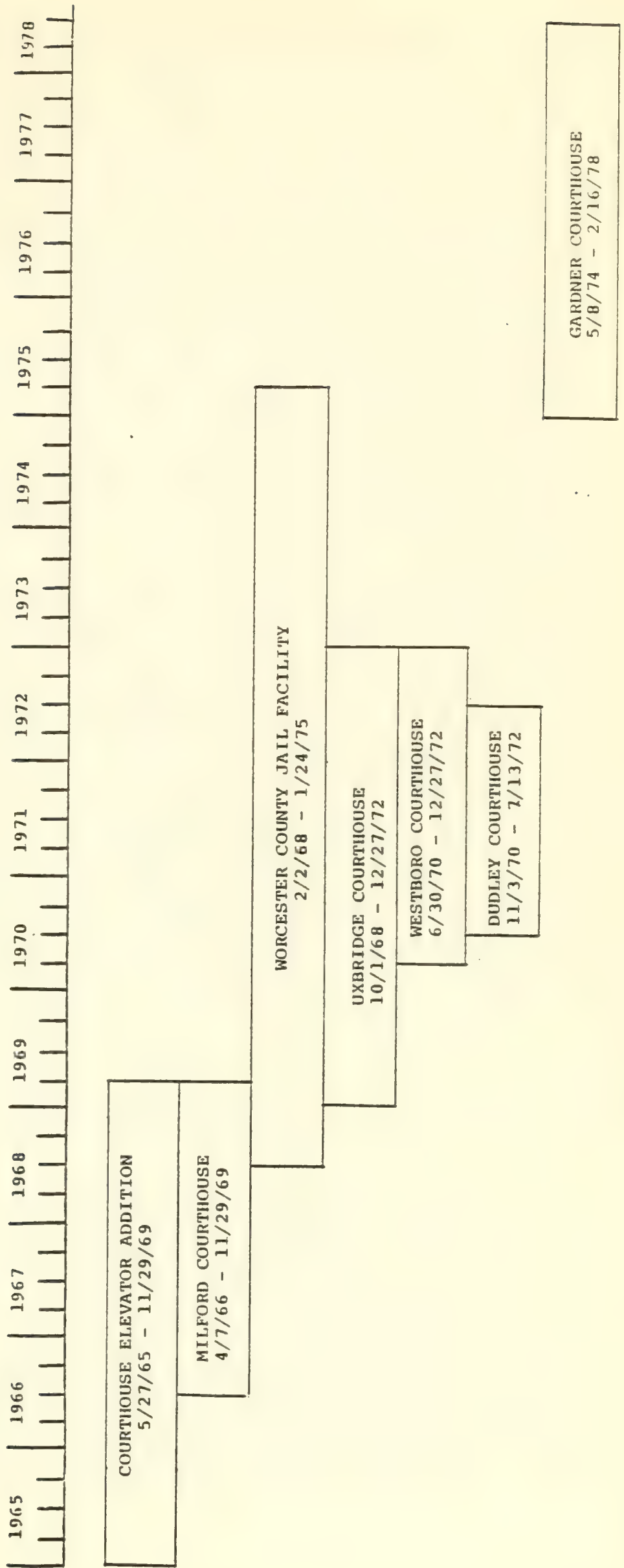
A: That very possibly could have come to their attention because I--I don't recall making my activities--political--relatively secret. They were aware my firm or I had been making political contributions at a state level.⁵

Masiello said, in an interview with the Commission, that he first mentioned county work to a friend of his (who was also a friend of County Commissioner Joseph Aspero) at a charity function in 1964.⁶ Masiello expressed his concern about the monopoly certain firms had on county work. Then, he mentioned the experience his firm had in designing penal institutions, (MCI) Concord; he did not ask his friend directly to speak to Aspero on his behalf but the friend offered to do so.

Sometime later, Masiello's friend called him and said that he had indeed spoken to Aspero and that Aspero had said Masiello could have the jail project for \$25,000. This sum represented about 10% of the anticipated architecture fees for the project and Masiello found it exorbitant.⁷ The friend, too, found this quite high. He said to Masiello, "I always knew Joe was a hitter, but I never knew he was a heavy hitter." Masiello replied that he would go along with some type of contribution, but that 10 percent was too high.⁸ Apparently the friend somehow conveyed the willingness back to Aspero .

CHART 2

WORCESTER COUNTY PROJECTS
OF MASIELLO AND ASSOCIATES



Masiello heard no more about the project until 1965 when Aspero contacted him regarding the addition of an elevator to the Worcester County Courthouse. Masiello went down to the courthouse, where the County Commissioners had their offices, to speak to Aspero, and later to all the Commissioners, about the project. Masiello expressed interest in the project and shortly thereafter the Commissioner's voted to appoint Masiello to the job.⁹

At this point, no funding for the project had been authorized. Funding was being processed, however, and since the elevator addition was considered urgent, Masiello immediately began work on the job. On May 25, 1965, he received written authorization to begin work on cost estimates and construction bidding documents, although no formal contract was signed until the funding was approved in December 1967. During that interim period, the Masiello firm prepared several cost estimates. A design or construction contract was finally signed in July 1968 and the project was completed within a year. Masiello received some \$15,514.56 in design fees.

Masiello testified publicly that in January 1966, Joseon Aspero contacted him again, this time regarding the proposed Milford Courthouse project. Aspero told Masiello to go to Milford to view the site and to speak to the district court judge about the program requirements. He also mentioned that he'd asked several other architects to do the same. Subsequently, Masiello did go to Milford, spoke with the judge and the staff, familiarized himself with the site and program requirements and reported back to Aspero.¹⁰

In their second conversation about the Milford project, Masiello and Aspero discussed the program and the judge's views. Aspero said that he felt Masiello was qualified for the project, but that another Commissioner was pushing for a different firm.

Q: Did Mr. Aspero indicate other firms were being considered for the award of this project?

A: Yes. He indicated there were other firms being considered for this project, in particular another firm was being pushed by another county commissioner also.

Q: Did Mr. Aspero indicate that your firm was also in the running?

A: Yes, I got that impression as our talk continued.

Q: Did he use the term political contribution in that conversation?

A: He did.

Q: And what did he say to you on that subject?

A: Well, he indicated to me that he was--he was of the opinion that we were reasonably qualified to do the project, but we would have to consider making a political contribution when asked, and then the amount

of \$16,000.00 came up. Of course, I was astounded that it was that amount of money because the appropriation for the construction cost of the building, as I recall, was something like three quarters of a million dollars, and that would draw a fee of somewhere under \$50,000.00 or somewhere in that range.¹¹

Masiello told Aspero, that \$16,000 was absurd, that "no architectural firm in their right mind" could pay such an amount, that it made no economic sense and that, at that level, he was not interested.¹² Masiello testified:

At that point the conversation started to go downhill, and I detected a note of unfriendliness in the continuing conversation, so that I left and went back to my office reasonably certain we were not going to be selected.¹³

Contrary to Masiello's expectations, Aspero again contacted him and told him that the Commissioners had reached a general agreement that Masiello should be awarded the Milford contract. Again, Aspero asked Masiello to come to his office to discuss the project where he raised the matter of political contributions once more. Masiello suggested \$3,000, which was far less than Aspero had first mentioned. They discussed figures between \$4,000 and \$6,000 before settling on about \$4,000. Masiello made it clear that he would make contributions only in small amounts, \$100 to \$500, and only as project fees were paid to his firm. Masiello observed, in his testimony before the Commission, that his firm already had cash flow problems because of payments being made in connection with state projects, particularly to Albert "Toots" Manzi; and he was reluctant to make any other "up front" commitments.¹⁴ Masiello also stated in interviews with Commission staff that, such a payment ... was never called a bribe or payoff. It was always called a "political contribution".¹⁵ Masiello also testified that Aspero used the term because it made everyone more comfortable.¹⁶

When Masiello left this meeting with Aspero he was not yet sure that his firm would get the job. Aspero indicated that he would have to discuss the designer selection with the Commissioners.

Subsequent to his meeting with Aspero, Masiello received a message that he should meet with the County Commissioners to discuss the project. At that meeting, the Commissioners informed Masiello that he had been selected as architect for the project. No one mentioned "political contributions" at this time, but Masiello testified that at that point, he knew he had an obligation of at least \$4,000. The Milford Courthouse design contract was formally awarded on April 7, 1966. Masiello's firm eventually received \$87,729.65 in design fees from the project.

Masiello's firm began to receive fee payments on the Milford project in the late summer of 1966. Specifically, he received \$1,940 on August 17, 1966, \$5,260 on October 10 and \$2,397.50 on October 12, 1966. Masiello stated in his testimony that shortly after his firm began to receive these fee payments, Aspero called asking him to make a political contribution to Commissioner Edward Bird, who was running for County Treasurer in the fall of 1966. Aspero suggested a figure of \$1,000 and specified that it should be in cash:¹⁷

Witness: I took a loan from the company made payable to my account, and I then cashed the check for \$1,000.00 and put it in a bank envelope and then as I said drove to Fitchburg and delivered it in person to Mr. Bird.

Q. You took a \$1,000.00 loan out of your firm's account upon depositing a fee check from the County?

A. That is correct.

Q. What was your conversation with Mr. Bird when you went to see him in his office in Fitchburg?

A. Well, generally I explained to him the purpose of my being there, I am sure he was aware I was coming. I told him that I was giving him this \$1,000.00 as part of the commitment that I made on a previous occasion, and that I was up there on some other business at the same time.¹⁸

Masiello testified that he gave Bird the money in an envelope in \$20 bills and that Bird left the envelope on his desk. Bird said he had to make a phone call, so Masiello stepped into the men's room. When Masiello returned, Bird was in the lobby with his coat on and the two went to lunch at a local restaurant.¹⁹

Masiello returned to Worcester after lunch and contacted Aspero. He told Aspero that he had just made the requested contribution and Aspero said that he appreciated it.²⁰

Subsequent to this cash contribution to Bird's campaign, in 1967 and 1968, Masiello made a number of smaller payments directly to Aspero. He testified that the amounts of these payments were \$100 or \$200, although there may have been one or two occasions when he gave Aspero \$500. Masiello could not completely recollect these payments but believed they were about six in number. Some, he stated, were in the form of a check, others in cash.²¹ In general, the payments were made at the county courthouse, either by special arrangement, or before or after regular business meetings of the County Commissioners. They were often made in response to specific requests by Aspero, although Masiello states that Aspero never put too much pressure on him at any one time.²²

Masiello testified that most of the money for these payments came out of his own pocket. The firm was having cash flow problems (aggravated by payments to other public figures), which limited the amount that Masiello could use to pay Aspero, forcing him to use his own salary.²³

Masiello testified that he also made political contributions to Paul Tivnan, which were to count against his \$4,000 "obligation". In 1968, when Tivnan was running for re-election as County Commissioner, Masiello informed him that he would like to make a contribution and Tivnan accepted the offer. Masiello specifically remembers giving Tivnan \$100 in cash at the Coach and Six Restaurant in Worcester. He believes also that he gave Tivnan \$100 or \$200 in cash on another occasion.²⁴ In interviews, Masiello stated that he made this payment either at the Coach and Six or at the county courthouse. Masiello informed Aspero of those "contributions" and told him that they should be credited against his "obligation."²⁵

In August 1968, Masiello moved to Lake Park, Florida. At that time, he had paid about \$2,500 to \$2,600 to the Worcester County Commissioners. Frank Masiello believes that further payments were made against the remainder (\$1,400 - \$1,500) of his original obligations but he states that his brother William was involved here as well. Some time after August 1968, Frank Masiello received a call from his brother. William told him that Aspero was moving to Las Vegas and wanted to tie up loose ends on their agreements. Frank Masiello's memory of the results of this conversation is not completely clear.²⁶ In interviews, Frank Masiello initially stated that his brother William expressed concern that, by not paying Aspero the remainder of their commitments, their chances of obtaining further work with the County might be jeopardized. Frank Masiello stated, too, that he flew to Massachusetts to take care of the matter; took some money from a savings account he maintained there and obtained money from the firm's consultants.²⁷ In his public testimony though, Frank Masiello was not sure that he had personally taken care of this matter. Rather, he thought that he left it to William to deal with Aspero.²⁸

Shortly prior to his move to Florida, Frank Masiello became involved in the Uxbridge Courthouse project.

A. Yes. I was aware that the Uxbridge Courthouse was coming up for consideration, and in all probability they would be seeking an architectural firm to design the project. I didn't feel we had a hold on anything that we were doing, so one of our trips to Boston to appear before the Commission on Counties or the Committee on Counties, driving down I discussed the possibility of modifying or reusing the Milford Courthouse plans on other locations. The

Board of County Commissioners, I guess, hadn't considered that option before and thought it sounded like a good idea, and they were planning the advantage would be when the project would be bid out, they would be reasonably certain of its cost and there would be a reduction in the architectural engineering fees, and this seemed to interest them a great deal.²⁹

Masiello then made a presentation to the Commissioners outlining his plan and showing slides of the Milford Courthouse, which was nearing completion. Masiello was aware by this time that there were several other courthouse projects under consideration in the County. He then suggested that the design for Uxbridge (to be based on Milford) could be done in such a way as to facilitate reuse. Again, Masiello found that this approach was well received.³⁰

At some time after this presentation and after approval of the bond authorization for the project (May 1968), Masiello spoke with Aspero. Aspero said that Masiello's firm was by no means certain of selection:

Q. Prior to your firm's selection for the Uxbridge project, did you learn that the County Commissioners considered other architectural firms?

A. Yes, I did.

Q. Was that brought to your attention by anyone in particular?

A. Yes, it was. Chairman Aspero indicated to me that other firms were being considered for it, and that one of the Commissioners had mentioned the name of another firm that had done quite a lot of other work on previous occasions, and he wasn't certain that we would get the project. But, he thought that the possibility existed that a majority of the members might vote for us, but he was not certain that this would happen.

Q. And in that conversation did you talk further with Mr. Aspero about political contributions?

A. Yes. He inquired if we would be willing to make an additional contribution, political contribution, whatever, and we discussed an amount, and by this point, at this time there wasn't haggling, I just suggested a figure of \$2,000.00 to \$3,000.00 and that was generally the end of the conversation.

Q. And that additional commitment you required in substance as an add-on to your original commitment to Mr. Aspero?

A. That is correct.³¹

On October 1, 1968, the County Commissioners awarded Masiello the Uxbridge Courthouse design contract.³² Masiello stated in interviews that he does not recall making any payments against this new commitment.³³ Aspero was re-elected as County Commissioner in November of 1968, but by February he had moved to Las Vegas to take a job with the Hughes Corporation as general manager of the Sands Hotel. He did not officially resign as County Commissioner until May 1, 1969.

During this period, Frank Masiello was seeking the design contract for the proposed Worcester County Jail. As noted above, the jail project had been under discussion since 1965, but it was not until early 1968 that concrete actions were taken toward obtaining funds. Masiello testified that during this early period, while he was doing other county work, he took every opportunity to make the Commissioners aware of his interest in the jail contract. At one Commissioners meeting, which Masiello attended, the subject of impending bonding authorization legislation was raised. The Commissioners asked Masiello if he would prepare a brief report on the construction cost for the project and on the general program for construction. This Masiello did in about a day and a half. That study was dated February 2, 1968. Masiello testified that there was an understanding that he would be paid for these services when the appropriation was made. He was not providing free services.³⁴

In late 1968 or early 1969, Masiello accompanied the County Commissioners and the Sheriff to a hearing before the legislative Committee on Counties. Presentations were made by the Commissioners and by members of the Worcester legislative delegation. Masiello stated that his own role was limited to answering questions of a technical nature.³⁵

On March 25, 1969, the legislature approved a bonding authorization of \$125,000 for the preparation of plans and specification for the proposed jail facility. In early June 1969, County Commissioner William Cassidy informed the Department of Corrections that Masiello and Associates had been chosen as the architects for the jail project.

On two occasions during this period Masiello spoke with the County Commissioners about the design contract award. Masiello stated in interviews that he spoke with Paul Tivnan after the approval of the bond authorization and before the contract award. Tivnan told Masiello that a number of firms nationwide were interested in getting the contract. Masiello also stated in interviews that he had learned either from his brother William or from Aspero, that since Aspero was no longer going to be around, "contributions" were to be made through Tivnan. Furthermore, Masiello believed that Tivnan approached him about making such contributions.³⁶

Masiello apparently made more specific arrangements during a meeting with Aspero. Masiello testified that at the time of that meeting he had positive indications for his firm's selection for the jail design contract. In that context, Aspero again requested a commitment by Masiello to make further "political contributions." Masiello himself suggested the figure of \$6,000 and said: This was not based on any percentage of architectural fees or construction costs,...it was just a number that I personally suggested and it was acceptable and that was essentially the end of it."³⁷

Masiello stated in interviews that this meeting occurred either around the time of the hearing before the Committee on Counties (late 1968-early 1969) or in April 1969 when Aspero returned briefly from Las Vegas.³⁸ Frank Masiello was usually in Florida during this period, and he believed that he did not undertake to fulfill this new commitment himself; rather he thought that the matter was left in the hands of William Masiello.³⁹

In private interviews with Special Commission staff, William Masiello discussed what he knew of Frank Masiello's payments to Joseph Aspero. William Masiello stated that Frank Masiello told him that money had to be paid for the study contract for the Worcester County Jail. Frank Masiello was in Florida and arranged that money be left in an envelope in the firm's offices in Worcester. William Masiello knew that this money was for Aspero and was to be picked up. He does not remember who actually came to the office to pick up the envelope containing the money.⁴⁰

In June 1969, Masiello and Associates was awarded the jail design contract and immediately commenced work on the program and specifications. Payment for that work began on August 11, 1969 with the issuance of a check for \$15,735.73. At this time, no formal contract had been signed, since a bond authorization for construction of the jail had not yet been approved. That approval was delayed until March 4, 1970, when the Legislature agreed to an \$8 million authorization. Shortly, thereafter, on April 23, 1970, Masiello and Associates signed the contract for architectural services on the jail project; fees were set at 5.7 percent of construction cost.

On March 25, 1970, while working on the jail contract, Masiello and Associates recommended, to the Worcester County Commissioners, that the firm of McKee-Berger-Mansueto (MBM) be hired to do cost control work.⁴¹ On March 31, 1970, the Commissioners' authorized Masiello and Associates to hire MBM as a cost control consultant for a fee not to exceed \$20,000.⁴² At a public hearing before the Special Commission William Masiello stated that, at a dinner he had with Anthony Mansueto in the summer of 1970, he suggested to Mansueto that MBM inflate by \$4,000 an invoice which it was about to submit to M&A for approval.

He further proposed that the \$4,000 be used for political contributions to Kevin White's gubernatorial campaign and (via Senator James Kelly) for Kevin Harrington.⁴³

The inflated invoice (for \$11,071.85) was then submitted, approved by M&A, and paid by Worcester County.⁴⁴ The campaign contributions were made to Senator Kelly (in the form of MBM corporate checks) at a meeting on October 14, 1970 at MBM's Boston office.⁴⁵ The Kevin White Campaign returned the check to Kelly because it was a corporate check and, as such, illegal. Kelly arranged that a new check be made out payable to Masiello. He presented it to Masiello, who endorsed it to Kelly. Kelly then endorsed it to the White campaign.⁴⁶

At that time, MBM had billed Worcester County only \$11,000 of a possible \$20,000. William Masiello testified that he made a deal with Mansueto whereby MBM would submit a phony invoice for the remaining \$9,000. In exchange for approving the invoice, Masiello was to receive \$5,000. Masiello stated that the invoice was submitted, he approved it, and MBM received payment by a check dated June 8, 1971. He said MBM never paid him his \$5,000.⁴⁷

In addition to those projects already described, the Masiello firm was involved in three other Worcester County projects: the Westboro, Dudley and Gardner Courthouses. On each of these projects, Masiello and Associates simply modified the plans from the Uxbridge Courthouse. In the case of Westboro, this meant that the architectural fees were reduced by 15 percent; on the Dudley and Gardner Courthouses the discount was 25 percent.

This reduction was not 15% of the dollar amount involved but rather a reduction in the percent charged against the total construction costs. These costs went up from one project to another and, thus, the fees paid to the Masiello firm actually increased in dollars.

The Gardner Courthouse design contract was not awarded until May 1974. By that time, county construction projects had come under the jurisdiction of state agencies. The selection of architects was not undertaken by the Secretary of Administration and Finance and the Designer Selection Board. However, this new procedure had little effect on the Gardner project. On November 21, 1973 County Commissioner Walter Kelly wrote to the Secretary of Administration and Finance, William I. Cowin, explaining how the Uxbridge plans had been reused (at a discount in fees) in Westboro and Dudley and requested approval of a continuation of Masiello's services, under a similar reuse arrangement, for the Gardner Courthouse.⁴⁸ The request was repeated by County Commissioner Philip J. Philbin (who replaced William H. Cassidy in January 1971).⁴⁹ Both Walter Poittrast, Director of the BBC and William Cowin ultimately approved that

arrangement and the normal selection procedure (through the DSB) was thereby avoided. Masiello and Associates, the Worcester County Commissioners, and the Director of the BBC signed the design contract for the Gardner Courthouse on May 8, 1974.

Throughout the Masiellos' association with Worcester County (and particularly during the later stages when William Masiello was in control) they provided the Commissioners with numerous free meals, services, trips and also entertainment. Early on, in 1967 or 1968, the Masiellos provided free printing services to the County Commissioners. As Frank Masiello stated in his testimony, his firm had a, "reasonably complete printing operation" that was used for specifications, inserts to brochures, etc. His brother William was a printer by trade. Specifically, the Masiellos printed handbills, envelopes, stationery, tickets to fundraisers and other campaign materials. Frank Masiello placed the value of these printing services at \$500-\$700 and he stated that he had an understanding with Commissioner Aspero that this amount would be credited against his political contribution commitment.⁵⁰

By 1969, William Masiello had become closely involved in the Masiello firm. From this time until at least 1976, he made it a habit to entertain key public officials at the company's expense. As is shown in other chapters, William Masiello entertained officials from most agencies with which the firm had design contracts. The Worcester County Commissioners were no exception. From William Masiello's expense accounts and charge card receipts, the Commission staff has documented over 80 occasions between October 1969 and 1976, on which Masiello paid for meals, drinks, lodging or entertainment for the County Commissioners and/or their families.⁵¹

At a private hearing before the special Commission on November 30, 1979, Commissioner Philip Philbin said that William Masiello always insisted on picking up the tab for drinks or meals:

Q. You say he was very insistent?

A. He was a check grabber. He was embarrassing sometimes.

Q. How was it embarrassing?

A. Well, if a bunch of guys goes out, he is always grabbing the check. It's uncomfortable.⁵²

One particularly noteworthy example was described by Philbin in private testimony on November 30, 1979 before the Commission. At some time in 1972 or 1973, Philbin accompanied Masiello on a trip to Los Angeles. Philbin stated that Masiello paid for the plane fare. Philbin also stated that he drove Masiello to the airport and when Masiello mentioned that he wanted some company on the

79
flight, Philbin just got on the plane with Masiello. He was completely unprepared.⁵³ Philbin and Masiello flew to Los Angeles on a Friday and stayed in the Ambassador Hotel, and returned on Monday. During the weekend they also made a side trip to Las Vegas and back and Masiello paid for those flights as well.⁵⁴ Masiello testified before the Commission on May 12, 1980, that Philbin, in essence, paid for his trip by turning over part of his winnings in Las Vegas.⁵⁵

In interviews with Commission staff, Frank Masiello described how his firm fared financially on the Worcester County projects, considering the "political contributions" that were made. He stated that the firm lost money on the elevator addition. The Milford Courthouse construction apparently started well but got more complicated in the later stages. The firm probably broke even upon completion. The jail required extensive redesigning and probably yielded no profit. A small profit was made on the Uxbridge and Westboro Courthouse and much larger gains were realized on the Dudley and Gardner projects.⁵⁶ Clearly, the reuse of the Uxbridge plans was beneficial to Masiello.

During the period 1965-1975, Masiello and Healy, and Masiello and Associates were awarded seven Worcester County design contracts. The first major award, the Milford Courthouse contract, was made as a result of an express agreement between Frank Masiello and County Commissioner Joseph Aspero regarding the "political contributions" Masiello would make. Apparently, there was no explicit agreement made before the award of the elevator contract, though Aspero knew that Masiello was willing to make such contributions. The agreement on the Milford contract was ultimately fulfilled through payments or political contributions made to Bird, Aspero and Tivnan. Thereafter, Masiello's long relationship with the County Commissioners changed. It could no longer be seen as a series of discrete agreements and corresponding payments. Rather, Masiello became, in a sense, the Commissioners' in-house architect. His commitments to political contributions were extended and his services "continued" to other contracts, but very little discussion or negotiation was needed. The arrangement came to be mutually understood and accepted.

On the Milford contract, for instance, there were several discussions of "political contributions" between Masiello and Aspero and the final figure was negotiated from some \$16,000 down to about \$4,000. Later, on the Uxbridge Courthouse, only one discussion was needed and the level of political contributions was quickly agreed to. On the jail contract, Masiello simply suggested a figure to Aspero, "...it was acceptable and that was essentially the end of it."⁵⁷ On the Westboro, Dudley and Gardner Courthouses, Masiello reused the plans from Uxbridge. Again, this was essentially a continuation of Masiello's services to the exclusion of other firms.

While the reuse of the Uxbridge plans in Westboro, Dudley and Gardner resulted in some savings to Worcester County, it was also highly profitable to Masiello and Associates. In interviews with Special Commission staff, Raymond Allard pointed out that the reuse of plans involved very little work on the part of the Masiello firm.⁵⁸ Indeed, he stated that the whole practice was the source of some amusement to the firm's employees. Essentially, all four courthouses were identical, the only differences being related to the peculiarities of the individual sites. Allard related, for instance, how, on one project, the courthouse wing had to be changed from the right to the left side of the building. Allard stated that this was accomplished by simply holding the original plan up to the light and tracing a new plan from the reverse side of the old, thereby switching the wing from one side of the building to the other.⁵⁹

Aside from the limited work required, Masiello and Associates benefited from the re-use scheme in another way. As Allard pointed out, although the firm was getting a reduced percentage fee, in fact, the total dollar amount of the fees actually increased on each project on which the plans were used. This increase occurred because the fees were still calculated as a percentage of construction cost; although the percentage was reduced, the construction cost increased enough so that the total dollar amount of fees also increased on each project.⁶⁰ In short, the re-use scheme allowed Masiello and Associates to earn more money for far less work.

The lack of a formalized, controlled system for the awarding of architectural design contracts in Worcester County allowed the Masiellos to establish, through contributions, free services, meals, etc., a continuing relationship with the County Commissioners that assured them of a virtual monopoly over County design work for over ten years.

BOND AUTHORIZATION APPROVED: 12/18/67, Chapter 792, Acts of 1967,\$160,000

DESIGNER: Masiello & Healy

DESIGN CONTRACT AWARD DATE: 5/27/65 (Official vote 7/23/68)

AWARDING COMMISSIONERS: Joseph A. Aspero, Edward P. Bird, Paul X. Tivnan

TOTAL DESIGN FEES: \$15,514.65

GENERAL CONTRACTOR: Sabia Construction Co.

GENERAL CONTRACT AWARD DATE: 8/1/68

GENERAL CONTRACT AWARD AMOUNT: \$127,541.00

PROJECT COMPLETION DATE: 7/1/69

TOTAL PROJECT COST: \$160,000

(Including designer fees and reimbursables, actual construction cost and all other costs relating to this project.)

BOND AUTHORIZATION APPROVED: 8/30/65, Chapter 660, Acts of 1965, \$750,000

DESIGNER: Masiello & Healy

DESIGN CONTRACT AWARD DATE: 4/7/66

AWARDING COMMISSIONERS: Aspero, Bird, Tivnan

TOTAL DESIGN FEES: \$87,729.65

GENERAL CONTRACTOR: Del Signore Construction Co.

GENERAL CONTRACT AWARD DATE: 6/21/67

GENERAL CONTRACT AWARD AMOUNT: \$809,474.00

PROJECT COMPLETION DATE: 10/15/70

TOTAL PROJECT COST: \$1,042,070.25

(Including designer fees and reimbursables, actual construction cost and all other costs relating to this project.)

BOND AUTHORIZATION APPROVED: 3/25/69, Plans and Specs, Chapter 92, Acts of
1969, \$125,000
3/4/70, Chapter 74, Acts of 1970, \$8,000,000
3/1/72, Chapter 37, Acts of 1972, Increased to
\$8,500,000

DESIGNER: Masiello & Associates

DESIGN CONTRACT AWARD DATE: 6/3/69 - Agreement to do preliminary plans and
specs.
4.23.70 - Design contract

AWARDING COMMISSIONERS: Cassidy, Walter F. Kelly, (4/23/70 contract, Tivnan)

TOTAL DESIGN FEES: \$477,563.05

GENERAL CONTRACTOR: Granger Brothers, Inc. (Work Release
Building) awarded 12/19/72 to Schena Construction
Co., Award amount (\$327,900)

GENERAL CONTRACT AWARD DATE: 5/13/71

GENERAL CONTRACT AWARD AMOUNT: \$7,111,700

PROJECT COMPLETION DATE: 12/12/74

TOTAL PROJECT COST: \$8,561,310.66
(Including designer fees and reimbursables, actual construction cost and all
other costs relating to this project.)

UXBRIDGE COURTHOUSE

BOND AUTHORIZATION APPROVED: 5/24/68, Chapter 342, Acts of 1968 \$700,000
7/15/69, Chapter 514, Acts of 1969
Increased to \$900,000

DESIGNER: Masiello and Healy

DESIGN CONTRACT AWARD DATE: 10/1/68

AWARDING COMMISSIONERS: Aspero, William H. Cassidy, Tivnan

TOTAL DESIGN FEES: \$71,451.35

GENERAL CONTRACTOR: Innamorati Brothers, Inc.

GENERAL CONTRACT AWARD DATE: 7/29/69

GENERAL CONTRACT AWARD AMOUNT: \$698,990.00

PROJECT COMPLETION DATE: 3/29/71

TOTAL PROJECT COST: \$861,067.29

(Including designer fees and reimbursables, actual construction cost and all other costs relating to this project.)

WESTBORO COURTHOUSE

95

BOND AUTHORIZATION APPROVED: 8/29/69, Plans & Specs, Chapter 852, Acts
of 1969, \$50,000
5/27/70, Chapter 360, Acts of 1970,
\$1,000,000

DESIGNER: Masiello & Associates

DESIGN CONTRACT AWARD DATE: 6/30/70

AWARDING COMMISSIONERS: Cassidy, Kelly, Tivnan

TOTAL DESIGN FEES: \$63,891.47

GENERAL CONTRACTOR: A. Mason & Sons, Inc.

GENERAL CONTRACT AWARD DATE: 8/25/70

GENERAL CONTRACT AWARD AMOUNT: \$828,114.00

PROJECT COMPLETION DATE: 7/14/72

TOTAL PROJECT COST: \$925,953.98

(Including designer fees and reimbursables, actual construction cost and all
other costs relating to this project.)

BOND AUTHORIZATION APPROVED: 8/29/69, Plans & Specs, Chapter 852, Acts
of 1969, \$50,000
8/14/70, Chapter 685, Acts of 1970,
\$1,000,000

DESIGNER: Masiello & Associates

DESIGN CONTRACT AWARD DATE: 11/3/70

AWARDING COMMISSIONERS: Cassidy, Kelly, Tivnan

TOTAL DESIGN FEES: \$60,056.05

GENERAL CONTRACTOR: A. Mason & Sons, Inc.

GENERAL CONTRACT AWARD DATE: 1/19/71

GENERAL CONTRACT AWARD AMOUNT: \$835,000

PROJECT COMPLETION DATE: 7/17/72

TOTAL PROJECT COST: \$999,843.80

(Including designer fees and reimbursables, actual construction cost and all
other costs relating to this project.)

GARDNER COURTHOUSE

37

BOND AUTHORIZATION APPROVED: 7/10/72, Plans & Specs, Chapter 629, Acts
of 1972, \$250,000
8/23/73, Chapter 681, Acts of 1973,
\$1,500,000

DESIGNER: Masiello & Associates

DESIGN CONTRACT AWARD DATE: 5/8/74

AWARDING COMMISSIONERS: BBC Project

TOTAL DESIGN FEES: \$121,271.83

GENERAL CONTRACTOR: Chick's Construction Co.

GENERAL CONTRACT AWARD DATE: 6/19/75

GENERAL CONTRACT AWARD AMOUNT: \$1,129,858.00

PROJECT COMPLETION DATE: 12/10/76

TOTAL PROJECT COST: \$1,904,258.86
(Including designer fees and reimbursables, actual construction cost and all
other costs relating to this project.)

SHREWSBURY HOUSING AUTHORITY

The Shrewsbury Housing Authority (SHA) was established by Town Meeting on April 2, 1962. The administering agency for housing authorities is the State Department of Community Affairs (DCA), formerly the State Housing Board. Local housing authorities are established in towns and cities to make application for, supervise construction of, and manage housing projects in the communities. The bulk of these projects are housing for the elderly. Although housing authorities are subject to the supervisory powers of the DCA, which allocates state funds for housing projects; housing authorities may also apply for funds through the federal government.

Introduction

In 1962, at the time of the establishment of the Shrewsbury Housing Authority (SHA), there was an immediate need for housing for the elderly in the Shrewsbury area. The task confronting the new authority's members was, broadly, to obtain funding for such housing and, more specifically, to choose between state and federal funding. In 1966, although funding was not yet securely in hand from either source, the SHA decided to go ahead with the selection of an architect for a proposed 100-unit project. They interviewed several candidates and on December 7, 1966 the SHA minutes show that the Secretary of the Authority, Walter Morrissey*, was instructed to draw up a list of architects from which a selection could be made at the following meeting.¹ The names of six architectural firms were presented at the Authority meeting on January 5, 1967.² The minutes record three votes for the firm of Masiello and Healy, and one for the firm of C.W. Buckley.³ The Authority instructed the secretary to send a letter to Masiello & Healy informing the firm of its selection.⁴

One Version of the SHA Selection Process

It is unclear from the minutes which members of the Authority voted for Masiello & Healy and which for C.W. Buckley, or the reasons behind the choices. Interviews and private hearings conducted by the Commission and its staff, addressed these issues. In an interview with Commission Staff on November 1, 1979, Walter Morrissey, Secretary of the Authority, said the Authority selected Masiello & Healy because of the firm's experience in public housing.⁵ Morrissey remembered interviewing a few architects and being impressed with Ted Healy, one of the principals of the Masiello firm. He did not feel that any member pushed for the selection of Masiello & Healy.⁶ On October 29, 1979,

*Morrissey was a member of the authority from March, 1964 to May 1970.

Commission staff interviewed Walter Wagner*, treasurer of the SHA at the time of Masiello's selection and one of the Authority members with experience in the construction business: a bricklayer by profession. At a private hearing on February 20, 1980 and at a public hearing on June 27, 1980, Wagner testified before the Special Commission that he was one of the members who voted for Masiello & Healy⁷ and that his reason for doing so was that he had seen an elderly housing project in Worcester that had been designed by the firm.⁸ He told the Commission that he liked the design, particularly since it called for extensive use of brick:

Q. Do you remember what the qualifications were of the Masiello firm as to being hired in the first place? What led you to select them?

A. Well, in my case, of course, I voted for Masiello & Associates because they had just completed a housing project for the elderly across Lake Quinsigamond which is opposite Shrewsbury, and I being a bricklayer, there was a lot of bricks and I love to see a lot of bricks in buildings, and I was told Masiello & Associates were good for bricks.⁹

Wagner also recalled that five or six architects sent in brochures to the Authority, but he did not recall interviewing any architects.¹⁰

Michael Trotto, Chairman of the Authority from 1963 to 1968, testified in a private hearing on February 22, 1980 and at a public hearing on June 27, 1980 that the authority advertised for architects to come to interviews conducted by the board¹¹ and also received brochures from several firms.¹² Trotto stated that he voted for Masiello & Healy because it was a local firm that had done several projects for the Worcester Housing Authority, and had won an award for the design of the project to which Wagner referred.¹³

Frank Masiello, the President of Masiello & Healy provided the Commission with a different explanation for the firm's selection. In public testimony before the Commission on April 1, 1980, Masiello recounted the following events:¹⁴

Masiello was first told about the project by the SHA's attorney, who suggested that Masiello write a letter to the Housing Authority c/o Shrewsbury Town Manager expressing interest in the project. Masiello did so and was notified soon afterward that he should come to the Shrewsbury Town Hall for an interview. Masiello remembered that at least four other architects were interviewed by the SHA the same evening. However, the SHA members made no decision on an architect that night.

Subsequent to the interview, Masiello received a call from Michael Trotto, housing authority chairman, asking him to come to Trotto's place of business, a

*Wagner was a member of the Authority from 1963 to 1980.

sand and gravel pit on 182 Holden St. in Shrewsbury, for an additional interview. Trotto indicated that other board members would be interviewing the other architects again as well. Masiello complied, and the two met inside one of the buildings on the premises:

Q. And would you please tell the members of the Commission what Mr. Trotto said to you on that occasion?

A. Yes. When I arrived he thanked me for coming down and then he told that after the interview there were still a lot of questions left to be answered, and each one of -- it was my understanding, or at least he led me to believe that he and individual members of the Housing Authority were conducting additional personal interviews with each of the firms that had been chosen for the interview, and I thought it was rather strange because just about every question he had asked me had been previously asked or gone over at our interview. We were quite careful to cover all bases, and the questions took the form of when can you start the job, how busy are you, how long will it take, what is your experience in housing. Just essentially all the ground we had previously covered.¹⁵

According to Masiello, it soon became clear that this personal meeting was directed toward another another end:

After we talked about it and he told me that we were being seriously considered with one or two other firms, he then started to lay the ground work for and then asked me later on, he was telling me the position to which he was appointed or elected was unpaid, that they were rendering a great service to the Shrewsbury - Town of Shrewsbury, that if people like him didn't take civic interest in community matters, that housing for the elderly wouldn't be forthcoming, and he just in general laid out all the good things that they were doing for the Shrewsbury Housing Authority.

It was at this point he had an expression I never heard at this time, it wasn't a political contribution, it was a finder's fee, and the finder's fee was based on the fact that they thought or he thought he was entitled to a fee for selecting a firm because it was on an unpaid position and they were very generous in giving this time to the Housing Authority for the Town of Shrewsbury...¹⁶

* * * *

I explained to him if he felt like that, why did he get on the Board at all, nobody twisted his arm to be there. He felt it was his civic duty and a certain amount of civic pride serving on the Board, and attempting to get housing for the elderly and low income families.

So, then he suggested a very high fee which seems to be the name of the game they were interested in, . . .¹⁷

Trotto claimed that other housing authorities were asking for finder's fees as well and suggested a finder's fee of twenty percent of the designer fees (anticipated to be about \$60,000) for the project. Masiello rejected this proposal, saying he would rather not pursue the project under those conditions. Trotto then suggested a figure of \$3,000-\$3,500 (closer to 5% of the anticipated fees), but Masiello was again non-committal. According to Masiello, he left the meeting thinking he did not care whether the Authority awarded the project to his firm or not.¹⁸

Shortly after Masiello's conversation with Trotto, the SHA selected Masiello & Healy as architects for the project. Soon after the firm's selection in 1967, Masiello claimed Trotto came to his office in Worcester to confirm the \$3,000-\$3,500 finder's fee:

- Q. Mr. Masiello, calling your attention back for a moment to the time just after your firm was voted upon by the Shrewsbury Housing Authority in early 1967, I believe you testified you had at that time a second conversation with Mr. Trotto?
- A. Yes. He came to my office one day, as I recall, and he wanted to more or less finalize whether or not I would be willing to make a commitment of approximately \$3,000.00 for the project, or pay a finder's fee as he put it. We discussed it and I guess -- well, I guess, I am certain that I generally agreed, yes, we probably would do it. We really hadn't at that time finalized it, but I again explained to him it would be in small amounts payable of course with the job. But, I got the feeling that we really hadn't come to any final agreement.¹⁹

* * * *

- Q. And then you had some conversation with Mr. Trotto with reference to the manner in which payment would be made, if they were to be paid?
- A. Yes. I indicated to him that as far as I was concerned the project appeared it was going to be dormant for some period of time, that there would be no up-front money paid because it's very likely the project might not go ahead. There might be a difference in the administration, he may not be on the Board and I wasn't going to be placing myself in a position of being held up twice if that were going to be the case here later on.²⁰

The Possibility of a New Selection Process

Masiello was right in two of his surmises. The funding for the project did not come through for two more years* and, by that time Trotto was no longer an SHA member:²¹

- Q. And present besides yourself was Mr. Trotto, an outgoing member of the Housing Authority?
- A. He was already off the Board as I recall it.
- Q. And Mr. Frongillo who had just come on?
- A. Yes.
- Q. Did it appear to you from that conversation that Mr. Frongillo was aware of your prior conversations with Mr. Trotto?

*There were substantial delays in securing funding for the project from the Department of Housing & Urban Development. Consequently, although the vote to select Masiello & Healy (after 1967, Masiello & Associates) took place on January 5, 1967,²⁶ a formal contract was not signed between the firm and the SHA until July 28, 1969.²⁷ Following this signing, the SHA encountered further delays due to disputes and changes regarding the scope and size of the project. It was not until March 1, 1973 that the SHA ratified the award of the construction contract for this project, referred to as Mass. 41-1.

**Frongillo was a member of the housing authority in 1963, but resigned. He was re-elected to the authority in March, 1969, remaining on until March, 1974, when he was defeated in a re-election bid. He was assistant treasurer in 1969 and chairman from 1970 to 1974. From November 6, 1974 to July, 1975, Frongillo served as the authority's executive director. Subsequently, he became a maintenance man for the authority.²⁸

- A. I am certain that he told -- Mr. Trotto told Mr. Frongillo that when we were originally selected, that he thought we still owed Mr. Trotto a commitment of \$3,500.00 for having been selected by the Shrewsbury Housing Authority.
- Q. Did Mr. Frongillo suggest the amount of the commitment be increased in view of the lapse of time?
- A. Yes, he did. I told him at this point in time I generally had a change of heart and I wasn't particularly interested in whether we got the job or not.
- Q. What did he say in response to that?
- A. He then said well, you understand, he said that there have been several years that have passed, that we are seriously considering cancelling your contract and we are seriously considering opening up the selection process once again, and to interview other firms for the project. I indicated to him that I wasn't particularly interested whether we were included on that list or not.²⁵

When he left the Meeting, Masiello thought that his firm would not be selected. However, to his surprise, Masiello later received a call from the SHA's attorney who made arrangements to sign the design contract for the project. Frank Masiello assumed that the Chairman of the Authority had simply forgotten to inform the attorney that they didn't intend to sign with the Masiello firm and the attorney was acting in accord with the old understanding.²⁶

Masiello signed the contract on behalf of the company;²⁷ Walter Morrissey signed the contract on behalf of the SHA.²⁸ The Masiello firm eventually received \$118,593.73 in design fees for this 100-unit project, along with an additional fee of \$3,086.40 for the design of a garage constructed at the site.²⁹ The total project cost was \$2,148,836.12.

William Masiello's Pursuit of SHA Work

The focus of this account now moves from the testimony of Frank Masiello to that of his brother William. After Frank Masiello's move to Florida, William had taken over direction of the Masiello firm and was interested in the pursuit of further work with the SHA. In public testimony, William Masiello told of running into Trotta in 1968 after Trotta had left the SHA.

I accidentally ran into him someplace in Worcester, and he had indicated to me that he had made a deal -- we had since started the project. As a matter of fact, I believe we were even into construction, and he indicated to me that Frank and he had made a deal for the project, and he felt it was through his efforts, that I should make good on the commitment, and I told him that I couldn't, that that was between he and Frank and if there was a commitment forthcoming he should receive it from Frank.³⁰

William Masiello later changed his mind about making good on his brother's commitment due to the following chain of events:

In 1971, even before the SHA awarded the construction contract for the federal housing project, it commenced efforts to acquire funding from the state

Department of Community Affairs for an additional 100 units of housing. SHA member John Manzi took the lead in seeking state funding.³¹ Manzi had been appointed to the authority in mid-1970 by the Board of Selectmen and the SHA members to fill the vacancy left by the retirement of Walter Morrissey. In March 1971, the board elected Manzi to a two-year term, in March 1973 to a five-year term, and in March 1978 to another five-year term. He was treasurer of the authority for several years and is currently vice chairman.³²

The minutes of the SHA meeting of September 15, 1971, show that at the suggestion of John Manzi, Chairman Frongillo indicated a letter would be sent by the Authority requesting information from the DCA relative to the availability of 100 elderly housing units financed by the state.³³ On October 20, 1971, Manzi reported to the SHA on his contacts with various persons at the DCA concerning financing for a housing for the elderly project to qualify the town for reservation of 100 units.³⁴ Manzi again reported on the progress of the application with the DCA on November 17, 1971, and stated that funds could be available after January 1, 1972, subject to an agreement between the SHA and the DCA.³⁵ The minutes of February 2, 1972,³⁶ February 16, 1972,³⁷ (the date the SHA received the funding award from DCA for 100 units of elderly housing) and April 5, 1972,³⁸ also reflect Manzi's initiatives with regard to the second housing for the elderly project in Shrewsbury.

April 5, 1972 is a significant date. The minutes of the SHA meeting on that date provide the first documentary evidence indicating that the SHA was considering the Masiello firm for the design of the state aided project.³⁹

The typewritten minutes which appear in the minutes book read as follows:

John Manzi reported on Shrewsbury 667-1, and his talk with Mr. John Murphy regarding DCA allocation to Shrewsbury without the variance in hand for the primary site. Designated as Attorney was Matthew R. McCann, as appraiser was Phillip G. Hedquist, and as Architects were Masiello and Associates.⁴⁰

On April 21, 1972, Frongillo sent a letter to Frank Masiello concerning the state-funded project, a section of which is as follows:

At its meeting of April 5, 1972, the Authority unanimously voted to appoint you as architect for this project. Enclosed are three contract forms for architectural service. Please execute all three forms and return them to this office for approval of the Department of Community Affairs.* Please also submit a suitable record of appropriate experience.⁴¹

Two things stand out from this letter. First of all, the letter refers to a unanimous vote of the Authority approving Masiello's selection, when in fact the minutes reflect that the Authority "designated" Masiello as architect and do not

*This contract was signed by Frank Masiello and Frongillo on June 8, 1972, and approved by Miles Mahoney, Commissioner of DCA on November 1, 1972.

reflect that a vote was taken. Secondly, it is questionable why Frongillo, at this juncture, requested a suitable record of experience from the architect. Under normal circumstances, an architect's credentials would be reviewed prior to the architect's selection.

Further, there is no evidence that the selection process was in any sense competitive. There are no documents from the time period indicating that the SHA considered any other design firms.

The members of the authority offered the Special Commission varied perspectives on the architect selection process for the DCA project. Then authority member Richard Whitney,* in an interview with Commission staff, recalled that authority members Manzi, Frongillo, and Wagner strongly favored the Masiello firm.⁴²

Authority secretary Robert McLeod asserted in an interview with Commission staff that Manzi pressed for Masiello's selection, his rationale being that the firm had done well on the federal projects and had experience in the design of housing projects.⁴³ Wagner stated that he himself felt the firm had done good work on the federal project and should be retained for the state project.⁴⁴ For his part, Manzi testified in a public hearing on June 24, 1980, that the Authority had retained the Masiello firm because they were already the architect of record for the authority. Manzi acknowledged in a private hearing on December 5, 1979 that the project was not advertised, nor were any other architects interviewed for the job.⁴⁶ Frongillo asserted that the SHA chose Masiello's firm because of its performance on the federal project.⁶¹ He also stated that the authority considered no other architects.**⁴⁷

In public testimony before the Special Commission on May 14, 1980, William Masiello described the terms of the selection process very differently. According to Masiello, during the time period when John Manzi was seeking state funding (Sept. to Nov., 1971) for the second SHA housing project, a meeting took place at the Mountainview Restaurant in Boylston, Mass. for William Masiello and authority members John Manzi, Lou Frongillo, Walter Wagner and himself.⁴⁸ The Mountainview Restaurant is located on Route 140 near the entrance to Route 20. William Masiello attended the meeting and, according to his testimony, understood

*Elected to a one year term in March, 1971, re-elected to a five year term in March 1973, holding the positions of assistant treasurer, vice-chairman and secretary at various times in his six years as a board member.

**When the project was announced publicly by the DCA in November 1972, 13 architectural firms sent letters to the SHA requesting consideration. The firms applying for the project had not been informed that the architect had already been agreed on.

in advance that the award of the design contract for the prospective state project would be discussed.⁴⁹

According to Masiello, the four men sat in a corner booth so their conversation would not be overheard. John Manzi spoke and all of them could hear and participate in the conversation.⁵⁰ In Masiello's recollection, Manzi was the main spokesman for the group.⁵¹ "This is what we got," Manzi said, meaning that the state job was coming up. He said, "do you want it? This is what it will cost you: ten percent of the design fee for the federal and state jobs." Masiello assumed that Manzi was aware that no money had been paid by the Masiellos for the federal project, because Manzi requested 10 percent of the fee on the state project to cover the award of both contracts. Masiello stated that Manzi continued, "You [Masiello] have to pay for the first (federal) contract as well as the second [state] contract if you are to get the second contract."⁵²

Masiello described to the Commission his own calculation concerning the Shrewsbury projects. He figured that the firm's fees for the federal project would be somewhere between \$130,000 and \$150,000. He expected that the fee on the state project would be \$60,000. The design fees for the two projects would total somewhere in the vicinity of \$200,000, and Manzi would want \$20,000. Masiello was concerned about the difficulty he would have in generating cash from the company in a manner that would enable him to obtain tax deductions for the funds generated. He was not eager to take the money out of the company by a method which would require him to pay taxes on it, the effect of which would be almost doubling the cost to Masiello for the payment. By the end of the meeting, Masiello testified that he was able to get the others to agree to a payment of ten percent of the design fees on the state job only, as opposed to Manzi's original request of ten percent of the fees on both jobs.⁵³ However, he informed Manzi, Frongillo, and Wagner that he would have to check with his brother, Frank Masiello before finalizing the agreement since the Kassuba Development Corp. owned the company at this time and any agreement of this nature had to be approved.⁵⁴

As a result of that meeting amongst the three of us, it was decided that I would pay them a fee of 10 percent of the current project. At the time, the project was approximately worth \$66,000 and I promised to pay them \$6,600. I reported the incident back to Frank who at the time was under the direction of Kassuba and I told Mr. Manzi and Mr. Frongillo and Mr. Wagner that I didn't have the power at the time to approve it, and I had to wait until such time as it was approved at KDC. It did get back to me. I forwarded it back to Mr. Manzi, Mr. Frongillo, and Mr. Wagner and I told them that there was a good -- it was a good deal.⁵⁵

Masiello's description of the Mountainview meeting in 1971 provides an explanation of why the SHA did not advertise the state project, why they did not

interview any other architect, why Masiello was simply "designated" as architect at the SHA meeting on April 5, 1972, and why, as authority members Whitney and McLeod told Commission staff in interviews, that Manzi, Frongillo and Wagner were intent on having Masiello selected. An analysis of Masiello's expense reports and charge account statements also reveals that Masiello entertained Manzi for dinner or drinks on January 29, March 30, April 1, and April 3, 1972, over the period just prior to Masiello's designation as architect.

On June 8, 1972, Lou Frongillo on behalf of the SHA and Frank Masiello and Lou Domian of Masiello and Associates signed the contract for architectural services for the state project.⁵⁶ The design fee for the 100 unit garden-style housing project was to be \$600 per unit, plus \$1,800 for the design of a community room, for a total of \$61,800. Miles Mahoney, Commissioner of the DCA, approved the contract on November 1, 1972.

An Increase in Fees for the Masiello Firm

In the fall of 1972, the DCA commenced efforts to revise the contract for the architectural services which housing authorities signed with architects. In particular, the DCA revised the fee schedule from \$600 per unit to a sliding-scale percentage of the construction cost of the project. This revision took effect on May 1, 1973 and architects signing the revised contract thereafter became entitled to fees which were substantially higher than those allowed under the old contract.

At the January 17, 1973 meeting of the SHA, Raymond Allard (then president of Masiello & Associates) requested that the contract for architectural services between the firm and SHA be amended to meet the new fee schedule. At the SHA meeting of February 7, Manzi made a motion to this effect, and the authority unanimously voted to amend the architect's fee schedule to meet the DCA's fee schedule revision, subject to approval by the DCA. In a letter to DCA Commissioner Mahoney written the next day, Frongillo asked for DCA approval of the Authority's action. He referred to "the revised fee schedule recently approved by the Commonwealth," when in fact the new schedule did not go into effect until May 1.

A memorandum located in the SHA files dated April 2, 1973, from Lewis S.W. Crampton (successor to Mahoney as Commissioner of the DCA) to all local housing authorities contemplating Chapter 667 projects reads in part,

RE: Revised architectural contract and fee schedule -

Any architect who is selected by a local housing authority after 1 May 1973 shall assume the responsibilities included in the revised contract for architectural services. The architect will now be paid a fee that is a percentage of the construction

budget determined by the Department. After May 1, the revised contract will be forwarded to those to whom this memorandum applies.

Another Crampton memorandum to housing authorities dated May 1, 1973 stated that:

At the vote and request of a Local Housing Authority, an architect may be asked to perform his services under the revised contract if he is not yet under contract to the Authority and the Department and if he has not yet received preliminary (Part II) approval from the Department. Any architect performing his services under the revised contract will be expected to comply with the Department Guidelines effective May 1, 1973.

Under the guidelines of these two memoranda, Masiello would appear not eligible for the amended contract or the increased fees that go along with it since his contract with the SHA had been executed and approved by the DCA six months earlier. Yet in the summer of 1973, the SHA and Masiello were still attempting to get the new contract for Masiello. Minutes of the SHA meeting, August 1, 1973 state, "Architect's fee discussed, we are to write to the DCA to request again a change in the contract for the architect."⁵⁷ At the SHA meeting of October 17, Masiello made a special request in person for an amendment to the contract.⁵⁸ Two days later authority Chairman Frongillo and Masiello president Raymond Allard signed an amended contract. At this point, the Masiello firm had already performed work and submitted two invoices and received payment under the old contract.⁵⁹ Deputy Commissioner Sweeney, of the DCA, approved the new contract on November 20, 1973. Under the new contract, Masiello would receive fees of over \$107,000 rather than \$60,000, while essentially performing the same amount of work as was required under the first contract.

On December 12, 1973, Masiello received his first payment under the revised contract in the amount of \$61,800. However, in a letter dated February 15, 1973 to Frongillo, the Deputy Commissioner Sweeney revoked the amended contract which he had approved on November 20. An excerpt from the letter reads, "We regret the fact that the new contracts were sent in routinely and are not aware of the circumstances leading to your Authority submitting two contracts for the same development." Subsequent to the receipt of the letter, the SHA commenced efforts to reinstate the amended contract. The attorney for the authority, Matthew McCann, prepared an analysis supporting the right of the authority to enter into the amended contract.⁶⁰

On or about May 1, 1974 the authority sent this analysis to the DCA, to the attention of Commissioner Crampton.⁶¹ On July 15, 1974, Deputy Commissioner Sweeney referred the matter to John Davey, Assistant Attorney General, Contracts Division. On November 18, 1974, Davey informed Crampton by letter that Masiello was entitled to the fee schedule allowed for the amended contract. Sweeney then relayed this information by letter to Frongillo on December 5, 1974. Masiello

ultimately received over \$120,000 in design fees for the project, twice the amount he originally expected to receive.

In an interview with Commission staff on October 30, 1979, Sweeney stated that he had been unaware of the existence of the first contract when the amended contract from the SHA arrived in his office. He asserted that the contract would have gone through the legal office (Frank Morris, Chief Counsel) at the DCA and then would have come to his office for his signature. Sweeney does not remember how he found out about the original contract. He said that once he learned of the first contract, however, he revoked the second contract, since, in accordance with DCA policy, Masiello was not entitled to the new fees.

The question arises as to why the SHA signed the second contract (including paying their attorney to pursue the issue) when there already was a contract in existence. Under the terms of Commissioner Crampton's memoranda, Masiello was not entitled to it; Masiello would not be providing any extra services to the authority in exchange for the additional fees. However, if there was an agreement on the part of Masiello to pay a ten percent kickback to authority members Frongillo, Manzi, and Wagner, the payment would have been larger under the second contract.

In testimony before the Commission, Frongillo stated that the authority could not raise Masiello's fee unless the DCA approved the second contract.⁶² Manzi asserted in an interview with the Commission staff on November 13, 1979, that the second contract was subject to DCA approval and since the DCA approved it, it must have been proper.⁶³ In a memo to the SHA dated October 9, 1973 (ten days before Frongillo and Allard signed the new contract), Attorney McCann informed the authority that it could execute the new contract with the Masiello firm, but that without the DCA approval the contract would be illegal.

Payments to Masiello & Associates and Payments on a Promise.

On August 1, 1973, Masiello submitted his firm's first invoice to the SHA, for twenty-five percent (\$15,450) of the fee, as specified in the first contract of \$61,800, and on September 7, 1973, he received partial payment on the invoice in the form of a check for ten percent of the fee (\$6,180) from the SHA. Masiello testified before the Commission in a public hearing on May 14, 1980 that it was at this time that he began making payments as agreed at the Mountainview meeting. Masiello explained that he cashed a payroll check and paid approximately ten percent of the first \$6,180 payment from the SHA or \$600, to the SHA members.⁶⁴ Masiello's corporate records show that he received a

payroll check in the amount of \$887.26 dated September 6, 1973. On September 19, Masiello submitted an invoice for \$9,270, the additional fifteen percent remainder due on his first invoice. He received payment from the SHA on this invoice on September 26. Masiello testified that he paid \$900 or \$1,000 to the SHA members pursuant to the ten percent arrangement upon receipt of the SHA check for \$9,270.⁶⁵

Audrey Rawson,⁶⁶ the bookkeeper for Masiello, and Raymond Allard⁶⁷ both testified before the Commission that a common practice used by Masiello to generate cash for Masiello involved writing a corporate check to one of the firm's employees, having the employee cash the check and return the money to Rawson for delivery to Masiello. A Masiello and Associates check dated September 28, 1973, payable in the amount of \$1,000 to Raymond Allard, was cashed that same day. The check was listed in the firm's books as an employee loan. According to Masiello, Allard returned cash to him from this check and that \$900 or \$1,000 was given to SHA members pursuant to the ten percent arrangement.⁶⁸

Masiello's next invoice was submitted on December 5, 1973, for \$61,800 or seventy-five percent of the total amended fee. Masiello submitted this invoice under the amended contract which the DCA had approved on November 20, 1973 which called for the larger fee for Masiello. On December 12, the SHA wrote a check to Masiello and Associates for \$61,800. Masiello testified that when he received the check he knew that he had to pay \$6,000 to Frongillo and Manzi to meet the conditions of the arrangements he had made, but he was concerned about giving such a large amount of money in a short period of time.⁶⁹ Masiello testified that for this reason the \$6,000 was delivered to Frongillo in two separate installments of \$3,000 cash, one installment by Allard and the second himself.

Raymond Allard, in public testimony before the Commission April 22, 1980,⁷⁰ testified concerning this aspect of the Shrewsbury payments. He said that on or about December 12, 1973 he and William Masiello were discussing Christmas bonuses in Masiello's office in the Mechanics Tower Office Building in Worcester.

He related to me that it was -- that I would be getting a five hundred dollar bonus, but he wanted to make the check out for \$3,500 with the five hundred dollars, that I was to cash this check and five hundred dollars was to be my bonus part of the check and the other three thousand he wanted me to return to him in the form of cash and large bills.⁷¹

Allard was then asked if Masiello told him the purpose for which he needed \$3,000:

- A. Yes, he did. He told me that the purpose for the three thousand dollars cash back to him out of the check was to be payment to two members of the Shrewsbury Housing Authority, a payment on a promise, for want of a better word, payoff, to the members of the Shrewsbury Housing Authority, the Authority that we were at that time doing two housing projects with, and that the payment was for two members -- it was partial payment actually, what he said, that was going to be half to one member and half to another

member of the Housing Authority. He just mentioned two of the members of the Housing Authority in particular.

Q. Whom did he mention?

A. A Mr. Lou Frongillo and Mr. Jack Manzi.⁷²

Following the conversation with Masiello, Allard received a Masiello and Assoc., Inc. payroll check dated December 12, 1973 in the amount of \$3,500. On that same date, Allard took the check to a local bank, cashed it, kept \$500 as his Christmas bonus and returned the remaining \$3,000 in large bills to Masiello. At this time, according to Allard,⁹⁶ Masiello requested that Allard deliver the \$3,000 that evening to Frongillo at the Wayside Cafe in Shrewsbury where Frongillo worked as a bartender. Allard, in his testimony, described in detail his first and unsuccessful attempt to deliver the money:

A. At that time Bill Masiello asked me if I would mind taking the envelope to Mr. Frongillo, and when I agreed to it I asked him where Mr. Frongillo either worked or lived and he told me that he worked as a bartender at a particular bar in Shrewsbury, the Fairlawn Section of Shrewsbury, by the name of the Wayside Cafe, and that I should deliver it to him there that evening.

At that time I asked him where the cafe was and he said -- I was unaware of the location of it -- and he described it was behind the donut shop on Route 9 on the road to Shrewsbury Center. So that sort of pinpointed it, and so I told him I would that evening and sometime during the day I had a conversation with a John Wackell [a draftsman] who was employed at Masiello wherein I showed him the money and made a comment, you know, it would be nice if you got or if we got bonuses of this type.⁷³

* * * *

Q. In your conversation with Bill Masiello that day, did he ask you to tell anything to Mr. Frongillo when you went to see him at the Wayside Cafe?

A. Just to tell him that, you know, this was from Billy, no other detail or anything, just hand it to him and say this is from Billy.⁷⁴

Q. So, in accordance with that conversation did you go to the Wayside that evening?

A. That evening about an hour, maybe an hour and a half after work, six-thirty or seven o'clock. I drove to the Wayside Cafe in Shrewsbury and parked the car and went in, and because my eyes weren't accustomed to the darkness there, and I didn't see Mr. Frongillo behind the bar, and it was some other person I didn't know. I approached him and asked him if Mr. Frongillo was there, that I had to see him. He told me that he wasn't working that evening, so with that, I went home.⁷⁵

The next day Allard told Masiello that he had been unable to deliver the money. Allard testified that Masiello checked to see if Frongillo would be working that evening, discovered that he would be, and asked Allard to try to deliver the money once more. In this attempt, Allard was successful:

A. About six-thirty, seven o'clock in the evening. It was dark at that time. And I again drove to the Wayside Cafe and entered it and it was again fairly dark upon entering it --

- Q. Would you describe how the interior of the cafe appeared to you that evening?
- A. Well, not a very large place. As you come in the door which is in the middle of the space the bar is on the left side as you enter and went away from you towards the rear wall, and there are a couple of tables and chairs on the right side, and a TV, I believe, is over the bar or towards the front of the building so that night when I entered there were maybe four or five patrons sitting at the TV end of the bar. So, when I entered I saw Mr. Frongillo standing behind the bar in the area where these patrons were sitting.
- Q. And you recognized him?
- A. I recognized him and he recognized me obviously and motioned me to the far end of the bar which was the back of the building and where there were no patrons, and he walked along the back of the bar and I walked along the front and came to the end of the bar, and I at that point handed him the envelope and said this is from Billy, and he took it with I don't remember which hand and I don't recall whether he at that time opened it. It had been sealed by that time. Whether he opened it or not I don't recall, but he, as I recall, just put it on the shelf under the bar. I don't know what was there. He said thank you and put it on the shelf under the bar at which time I left, and as I left he was still at that area of the bar.⁷⁶

Masiello testified that he himself delivered the second \$3,000 to Frongillo at the Wayside Cafe making the total of \$6,000 from the \$61,800 fee payment.⁷⁷ Masiello generated the money for this transaction through a \$3,000 payroll check to himself dated December 17, 1973 and cashed two days later:

. . . The second payment, the \$3,000 I cashed and I personally brought it to Mr. Frongillo at the Wayside Cafe in Shrewsbury. We were standing at the bar and I handed it to him over the counter.

- Q. Do you know why it was that you split up the payments instead of paying in one \$6,000 amount?
- A. Yes. I can remember explaining to Mr. Frongillo at one point that it concerned me to give him \$6,000 all at once, that it would be too much money for the firm to be carrying around at any one given time. So, I gave him the first one and five or six days later I gave him the remainder.⁷⁸

Audrey Rawson, who acted as bookkeeper for the Masiello firm, in public testimony before the Commission on May 1, 1980, said that she remembered both the \$3,500 check to Allard and the \$3,000 to Masiello. She understood that the two checks were cashed and the money returned to Masiello, and further that Allard probably kept only \$500 of his check as a Christmas bonus, because \$500 was the largest bonus that any firm employee had ever received.⁷⁹

The two \$3,000 payments to Frongillo in December, 1973 are the last payments to SHA members that Masiello specifically recalls. He asserts there may have been other payments subsequently since he believes that the total amount paid by him to SHA members was \$7,500 - \$7,600.

When William Masiello was asked if he recalled any additional payments made to members of the SHA, he testified:

A. I remember when I moved into the new mansion about 1975 Mr. Frongillo did confront me, and he did ask for additional monies on this project. It was on or about the same time that the DiCarlo and MacKenzie extortion began to hit the newspapers. I became very leery at the time and I told him, well, I am going to hold off. Why don't we wait and hold off on this. He walked out and carried a check with him and some 30 days later they returned with the check and we cashed it.

Q. He had a check from the Shrewsbury Housing Authority which he didn't give you because you wouldn't give him part of it?

A. That's correct.⁸⁰

The check was for extra design services provided by the firm. Frongillo had been defeated in March, 1974 in his bid for re-election to the board but was appointed part-time Executive Director for the Board on November 6, 1974, a position which he retained until July 31, 1975. Records of the SHA show that on July 31, 1975, the SHA wrote a check to Masiello and Associates in the amount of \$5,985, the payment being for extra design services provided by the firm on the federal project. This extra work was required due to the bankruptcy of the original contractor for the project. This check was not negotiated until August 26, 1975. The date of the check is the date of Frongillo's last day as executive director, the last day he would have had direct access to any checks from the SHA to Masiello.

Frank Masiello, in his testimony, provided two final pieces of information concerning these contract awards: He testified that when his brother Billy was in Florida during the DiCarlo-MacKenzie trial, Billy told him that he had taken care of Frank's original commitment with Trotto, that if he hadn't taken care of it, he would not have received the design contract for the state project.⁸¹ In addition, Frank Masiello had a discussion with Allard during which Allard stated that he had delivered \$3,000 for Masiello to Frongillo at a place where Frongillo was bartending.⁸²

In 1977, following a complaint by a former member of the SHA, the Department of Community Affairs conducted a management audit and review of the Shrewsbury Housing Authority. (See appendix) This audit addressed seventeen separate areas of concern, all of which related to questionable practices and acts of the Authority and its members, some of which outlined possible conflicts of interest by members or employees of the board. Included among those areas of concern were claims that board members were paid for securing housing for applicants, that employees who did not go along with the "powers" at the SHA were fired, that Manzi and John Kender (board member from May, 1974 to September, 1977) used their

influence to acquire housing at SHA housing projects for their relatives, that the executive director was guilty of conflict of interest, and that Manzi had a load of loam delivered to his home and saw that the SHA was billed for it. The DCA's review of many of these matters was inconclusive or incomplete. Although the DCA recommended some changes to be made by the SHA and its members, no member or employee left the SHA as a result of the audit.

In public testimony before the Commission on June 27, 1980,⁸³ and in private testimony before the Commission, on February 22, 1980,⁸⁴ Michael Trotto denied making any arrangement whatsoever with Frank Masiello concerning the award of the design contract for the federal project. Trotto denied any conversations concerning kickbacks, payoffs, or finder's fees to Trotto from Masiello with Frank Masiello at the gravel pit, at Masiello's office, or at Frongillo's lumber yard. Trotto also denied ever having any conversation with William Masiello concerning Trotto's alleged agreement with Frank Masiello regarding the award of the federal design contract to the Masiello firm. Finally, Trotto claimed never to have discussed any kickbacks with other members of the Shrewsbury Housing Authority and states that he never received anything of value from either Frank or William Masiello or from any past or present members of the authority.

In his public⁸⁵ testimony⁸⁶ before the Commission, Walter Wagner also denied ever receiving anything of value from Frank or William Masiello in return for the award of design contracts to that firm. Wagner has no recollection of discussions with Frank or William Masiello concerning kickbacks from that firm to himself or to other members of the SHA, nor does he know indirectly that such discussions took place. Wagner did acknowledge that a meeting took place at the Mountainview Restaurant in 1971, at which Masiello, Jack Manzi and Lou Frongillo were also present. He asserts, however, that no discussion of a percentage kickback from Masiello to the SHA members took place at this meeting.

Louis Frongillo denied under oath at a private hearing before the Commission on November 14, 1979 that he ever spoke with Trotto on the subject of Frank Masiello, or that he ever received anything of value (other than a bottle of liquor) from William Masiello.⁸⁷ Frongillo asserted that neither William Masiello nor any employee of the Masiello firm visited him at the Wayside Cafe or transmitted an envelope containing money to him, either at the Wayside Cafe or at any other place. Frongillo refused the Commission's invitation to testify at a public hearing.

In private testimony on December 5, 1979⁸⁸ and public testimony before the Commission on June 27, 1980,⁸⁹ John C. Manzi denied any knowledge of agreement or kickback arrangements or discussions of such matters between Frank or William

Masiello and himself or with any other members of the Shrewsbury Housing Authority. Manzi asserted that he never discussed with Michael Trotto the award of design contracts by the authority to the Masiello firm. He denied ever being present at a meeting at the Mountainview Restaurant at which William Masiello was present. Finally, Manzi denied ever receiving any money in any form either directly or indirectly, from William Masiello or any employee of the Masiello firm, nor did he know of any other member of the Shrewsbury Housing Authority receiving any such money.

The SHA investigation is one in which the Commission began with a small piece of information disclosed in an interview which eventually led to a well-documented and corroborated story of favoritism shown by the SHA to Masiello & Associates and payments to Authority members.

In one of a series of interviews conducted with employees of the Masiello firm on the subject of cash generation, John Wackell recalled the incident in which Raymond Allard showed him money and commented on it in passing. The information provided by Wackell served to persuade the U.S. Attorney to subpoena Raymond Allard whose testimony detailed the cash generation and Allard's errand to deliver payment.

It was Allard's testimony in turn which led to the questioning of both Frank and William Masiello concerning the housing contracts with the SHA. As in all the Commission's investigations, the analysis of both financial and non-financial documents served to support and augment the testimony of key witnesses.

TAUNTON HOUSING AUTHORITY

INTRODUCTION

In the early 1970's, the city of Taunton began to consider the construction of a housing for the elderly project. The Commission's Taunton investigation centered on the award of the design contract for that project (eventually designated Taunton Housing Authority Project 667-1, Housing for the Elderly).

In Massachusetts, public housing for the elderly projects are administered at the local level by the community housing authority. In towns, such authorities consist of four elected members and a governor's appointee. In cities, four members are appointed by the mayor and the fifth by the governor. The members themselves are not paid but may hire a paid Executive Director to handle the authority's affairs.

Once the local government decides to construct public housing, housing authorities are charged with determining the project's scope and selecting the site, the designer and the contractor. They are also responsible for reviewing the architect's specifications for certain items including masonry, hardware, plumbing, kitchen cabinets. Total payments to contractors are determined by their bids on the project, but the housing authority decides on the timing and amount of individual payments (though they lack the authority to release such payments). Total design fees are generally calculated as a percentage of construction cost, but, again, the housing authority determines the timing and amount of individual payments.

Funding for these projects is under the control of the Department of Community Affairs (DCA). The DCA receives money for housing projects through bond issues authorized by the legislature. First, local housing authorities apply to the DCA for funding. The DCA is then able to decide how to allocate available funds between communities. The DCA also retains final control over the release of payments to contractors, etc. After the DCA approves a project, it then reviews project designs and confirms various decisions, such as site selection, made by local authorities.

On May 7, 1973, the DCA approved funding for Part I of the THA project 667-1.*

At that time, the THA consisted of four mayoral appointees: Raymond Wheeler, John Shea (still serving), James Thomas (still serving), and John Fernandes (now deceased) and the governor's appointee, Claude Cornaglia. The Executive Director

*(Part I of such projects generally consists of developing a program: population studies, tenants' needs, etc.)

was Frederick Fitzsimmons (also deceased). Taunton's mayor was Theodore Aleixo, who was serving concurrently as a State Representative. Only Raymond Wheeler had been appointed to the THA by Aleixo; the rest were carryovers from previous administrations.

By March of 1974, the THA had received statements of interest in the project from numerous architects. On March 12, according to the minutes of the THA meeting, Frederick Fitzsimmons presented the authority a "complete list of architectural firms who have notified the Authority" in response to an advertisement for the project.¹ Of the 15 firms on that list, the THA chose five firms to be interviewed for the project on March 18. After these presentations, the THA decided to interview three more firms on March 25. Two of these were drawn from the original list of fifteen and were sent invitations on March 19. The third firm, Masiello & Associates (M&A), was not on the original list. The THA sent M&A's invitation out on the 20th. M&A was the last firm interviewed and immediately following the presentation the THA voted on the selection. M&A was selected by a margin of four to one; the sole dissenting vote came from Claude Cornaglia, the governor's appointee.

BACKGROUND TO THE CONTRACT AWARD

In private interviews with the Commission staff, and at a private hearing before the Commission, William Masiello discussed events leading up to the THA's designer selection for project 667-1. At some time well before the selection, Masiello was telephoned by Vite Pigaga, an old friend and former State Senator. At this time, Pigaga was the administrator for the Commonwealth's Health, Welfare and Retirement Trust Fund. Because of their long friendship and Pigaga's close involvement in both the legislative and executive branches of the state government, Masiello and Pigaga had worked out an arrangement whereby Pigaga kept an ear open to possible state architectural work for Masiello and Associates. Pigaga also tried to help Masiello make contacts which could be useful in securing design contracts for his firm. In this regard, Pigaga called Masiello and arranged to introduce him to John P. ("Jack") Ford. Ford had been an aide to Pigaga when the latter was a State Senator and was then an aide to Theodore Aleixo, Mayor of Taunton and State Representative.²

Pigaga and Masiello arranged a lunch meeting at Jimmy's Harborside Restaurant in downtown Boston which Jack Ford also attended. At this time, Masiello knew from DCA listings that Taunton had a housing project pending and he discussed this with Ford. Ford indicated that he could help Masiello obtain the design contract. The two men discussed it and Masiello agreed that if the DCA provided funding for the project, he would be willing to make to make payments to Ford in

exchange for help in obtaining the contract.³ The exact date of this meeting has not been discovered, but the fact that the "deal" was made contingent on approval of funding by the DCA places it before May 7, 1973.

107

After the DCA decided to fund the project, Masiello and Ford met in the lobby in front of Senator Joseph DiCarlo's State House office to confirm their deal:

Q. And did you then meet with Mr. Ford in the State House, in the lobby or foyer just outside of the office of Senate Majority Leader DiCarlo?

A. Yes.

Q. Do you remember talking outside of Mr. DiCarlo's office with Mr. Ford and discussing with him a payment of money by you for him in assisting in obtaining a contract from the Taunton Housing Authority?

A. Yes.

Q. In that conversation did Mr. Ford ask you to pay him an amount of money equal to ten percent of your firm's design fee in cash on the Taunton contract in return for his help in obtaining that contract for your firm?

A. Yes.

Q. And did you say in substance to Mr. Ford that you would be willing to pay him an amount of money equal to five percent of your firm's fee for his assistance in obtaining the contract?

A. Yes.

Q. Did you during that conversation agree with Mr. Ford you would pay him an amount of money in cash equal to eight percent of your firm's fee in turn for his assistance in obtaining the contract?

A. Yes.

Q. In the same conversation did you agree with Mr. Ford you would pay him in installments?

A. Yes.

Q. And did you also agree with Mr. Ford that you would pay the first installment after your firm had begun to receive its fee from the Taunton Housing Authority?

A. Yes.⁴

In a private interview, THA member James Thomas said he remembered that Masiello's name came up very quickly, perhaps after March 12. He admitted being "aware" that Mayor Aleixo and his appointee Raymond Wheeler were pushing for Masiello, though he would not say how this was done. He also added that there was no pressure put on him to vote for Masiello and that he did so solely on the basis of merit.⁵

Shortly before the March 25th interview, William Masiello invited the THA members to visit his newly constructed Shrewsbury Housing Project. Later, he

took them to dinner at the Sheraton-Lincoln in Shrewsbury.⁶ Masiello's expense accounts show that he paid for these meals.

The 667-1 design contract between M&A and the THA was formally executed on April 24, 1974. The fee for design services, set as a percentage of the estimated construction cost, was \$103,800, to be revised upward upon acceptance of the general construction bid. On September 11, 1975, the THA accepted the \$2,554,772.00 bid from Rocheford Construction Co., Inc. and awarded the construction contract. Masiello's fee was revised to \$175,118.95.

The DCA delayed the project because it was not satisfied with Taunton's site selection. In particular, the proposed site (owned by the Taunton Redevelopment Authority) was undeveloped and far from the center of town. At a January 8, 1975 meeting, arranged by Mayor Aleixo, a compromise was worked out which provided that the remainder of the site would be developed in conjunction with the housing for the elderly project. To this date, that section remains a barren field.

After January 8, the THA had its site and architect and on January 31, 1975 the DCA formally issued the contract for financial assistance for Part II.* Masiello & Associates then proceeded to its working drawings. As noted above, the construction contract was awarded on September 11, 1975. In general, the project proceeded smoothly. There were few problems with the plans and the construction and the THA members agreed that the job was performed satisfactorily.

PAYMENTS

At a private hearing before the Commission on February 8, 1980, William V. Masiello stated that during 1975 his firm was receiving fee payments from the THA and admitted that, as a result of agreements he had struck with Ford earlier (see above), he made payments of cash to Ford. At that hearing, Masiello discussed two particular payments.⁷ In private interviews, he stated that there were three payments altogether.⁸

Investigation by the Commission staff into the public records of THA Project 667-1 has shown that the THA issued two checks to M&A during February 1975, one on the sixth for \$14,470 and another on the 20th for \$20,760. Investigation into the corporate records of M&A has shown that on February 20, 1975, William V. Masiello wrote an M&A check (#2356) for \$2,000, payable to himself, and cashed it. Masiello's diary and expense accounts show that that evening he had dinner at Jimmy's Harborside Restaurant with Jack Ford, Vite Pigaga, Bob "Mucko" Murray (an aide to State Representative Biff McLean) and Larry Golden (a former State Representative). On the basis of the timing of the THA fee payments and the

*Part II consisted of schematic and design development plans.

meeting with Ford, and the evidence of cash generation, Masiello agreed in a private interview that this was one occasion on which he gave cash to Ford.

109

Another payment to Ford followed the THA's third fee payment to M&A of \$41,520 on June 10, 1975. Three weeks later, on July 2, 1975 Masiello wrote a \$4,000 certified check to his friend Charles Theodore, a structural engineer used on most M&A jobs. On the same day, Theodore deposited this check in one of his business accounts, wrote a check on that account for \$2,000, payable to himself, cashed it and returned the \$2,000 to Masiello.* The remaining \$2,000 was returned to Masiello at a later date, earmarked for another official.

From Masiello's diary and expense reports, the Commission learned that on July 7, 1975, Masiello met with Jack Ford at the Red Coach Grill in Middleboro. In private interviews Masiello discussed this meeting. He stated that he went to the restaurant in the afternoon with Barbara Flynn intending to meet Ford there. They happened to run into two of Masiello's friends, sat in the lounge and had a couple of drinks.¹⁰ Ford eventually arrived and Masiello gave him \$2,000.¹¹

At a private hearing before the Commission, Barbara Flynn described that meeting in the Red Coach Grill. She stated that they went there because Masiello said he had to meet someone. She stated that they accidentally met some friend of Masiello's there and joined them for a few drinks. Later, another person arrived and Masiello excused himself saying he had business to discuss, and left with the man. He returned about fifteen minutes later.¹²

At a private hearing and in private interviews, Masiello described one other payment to Ford. He stated that he gave cash to Ford in a stairwell near Ford's office on the fourth or fifth floor of the State House.¹³ He stated that Ford maintained that office because he was then an aide to Theodore Aleixo who was both a State Representative and Mayor of Taunton.¹⁴ Masiello believes he gave Ford \$1,000 on this occasion.¹⁵

In interviews, Masiello described the Red Coach Grille payment as the last,¹⁶ but in view of other evidence it seems more likely that the State House payment was in fact the last. Their deal stated that Masiello would pay Ford after receiving payments from the THA. However, there were no such payments between February 20, 1975 and June 10, 1975. It is possible that this State House payment was actually the first and followed the February 6, 1975 fee payment to M&A. However, there is no evidence of cash generation in Masiello's financial records on or just following this date.

*This was not an uncommon transaction between Masiello and Theodore. Theodore often cooperated with Masiello in generating cash for payoffs or political contributions, usually through an account from his old firm, Theodore Associates. See, for instance, the report on the City of Boston.

There is evidence of cash generation in October 1975, three months after the Red Coach Grille payment. On October 2, M&A received \$30,203.66 from the THA. On October 10, 1975, Masiello wrote himself a company check (#3058) for \$1,000 and cashed it. Since the amount involved is the same and since it closely follows a fee payment to M&A, it seems likely that this cash generation was related to the third payment Masiello described.

In total, Masiello paid Ford \$5,000, which was much less than eight percent of fees as agreed. In an interview, Masiello characterized the \$5,000 as "... eight percent of 65 percent of the job."¹⁷ He stated that although he came up short "they never pressed."¹⁸

As noted above, Vite Pigaga arranged Masiello's introduction to the City of Taunton in general and to Jack Ford in particular. In July 1975, Pigaga lost his job with the Health, Welfare and Retirement Trust Fund Office when it was dissolved by Governor Dukakis. In August, Masiello met Pigaga on the first tee at the Pleasant Valley Country Club. He stated in interviews that at the time he offered to pay Pigaga two percent of the firm's fees for his help in obtaining architectural contracts.¹⁹ He stated, too, that as a result of that offer he gave Pigaga a check for \$800 "somewhere along the line"²⁰ for his help in securing the Taunton contract. Investigation of M&A's financial records has shown that on October 2, 1975, Audrey Rawson, an M&A employee, made out a company check (#2989) for \$800 payable to Pigaga.

Masiello has also stated that because Pigaga was an old friend and unemployed, he also offered Pigaga a job with M&A. Pigaga was travelling almost daily to Boston to look for work²¹ and Masiello offered to pay Pigaga \$100 a week for keeping his ears open for architectural work for M&A. In private interviews, Masiello stated, that he eventually paid Pigaga about \$2,000 (the \$800 check and the rest in cash).²²

On February 22, 1980, Pigaga testified privately before the Commission. He stated that he had in fact introduced Masiello to Ford at Jimmy's Harborside Restaurant. He stated, too, that the possibility of architectural work in Taunton was discussed. However, he said that there was no discussion of Ford speaking to anyone on Masiello's behalf, nor of any payments to Ford by Masiello.²³

Pigaga testified that Masiello did pay him \$800 in October 1975. But this, he said, was for generally keeping an ear open for architectural work and not for the Ford introduction. He denied that Masiello ever paid him anything apart from the \$800.²⁴

In interviews, Masiello told Commission attorneys that in the summer of 1979, Pigaga came to see him on the Cape, worried about the Commission's

investigations. He told Masiello that the two of them should get together on their stories about the \$800 check. According to Masiello, they decided then that they would say the \$800 was for services rendered in connection with finding architectural work for M&A.²⁵

Pigaga has testified that he did in fact meet with Masiello in the summer of 1979. He said that he told Masiello that a state trooper from the Special Commission had come to his house and asked questions about Masiello and his design contracts.* But, according to Pigaga, this was the extent of their conversation. He specifically denied that the \$800 check was discussed.²⁶

Pigaga's testimony largely corroborates Masiello's account of the events of the summer and early fall of 1975 and of the summer of 1979. Pigaga agreed that he introduced Masiello to Jack Ford at Jimmy's Harborside Restaurant and that architectural work in Taunton was discussed at that meeting. He agreed, too, that Masiello paid him \$800 for keeping an eye open for architectural work for Masiello and Associates. It was about eight weeks from the time Masiello spoke with Pigagaw at Pleasant Valley to the time of the \$800 payment - or about \$100 a week as agreed. Pigaga also acknowledged that he met with Masiello in the summer of 1979 and told Masiello that he had recently been interviewed by a state trooper regarding Masiello's design contracts.

There is, then, agreement on the basic facts: the introduction and discussion at Jimmy's Harborside Restaurant, the \$800 check to Pigaga from Masiello and Associates, and the meeting in the summer of 1979. Masiello's and Pigaga's accounts differ only in their explanation of the events. Pigaga denied that any sort of "deal" between Masiello and Ford the Taunton contract was discussed at the Jimmy's Harborside Restaurant meeting. He disputed Masiello's assertion that the \$800 check payment for his help (the Ford introduction) in obtaining the Taunton design contract. And he denied that he discussed the \$800 with Masiello in 1979.

FUNDRAISING

William Masiello also described making a political contribution in connection with his contract with the THA.

On October 28, 1976, a fundraiser was held for Theodore Aleixo's campaign for re-election to the Massachusetts House of Representatives at THA member Raymond Wheeler's home. Present at this gathering were Wheeler and Richard Johnson of the THA, Masiello and Wayne Salo of Masiello & Associates, as well as Aleixo. Masiello has testified that he handed \$200 in cash to Wheeler at this affair, intending it to go Aleixo.²⁷

*The interview referred to was conducted by a State Trooper with the Special Commission staff, 7/2/79.

On April 23, 1980, Wayne Salo testified publicly before the Commission that he saw Masiello hand a roll of cash to someone at this fundraiser. He could not remember exactly who it was, but said it was an aide of Aleixo's and might have been Wheeler. He did not know the amount of money in the roll.²⁸

KITCHEN CABINETS

Another area involving questionable practices was the awarding of the supply contract for kitchen cabinets. At this time, Masiello usually arranged for Driscoll-Weber to supply cabinets, whether or not there was a bidding process.* To insure that Driscoll got the contracts in cases involving bids, Masiello invited him to help write the cabinet specifications. This would be done in such a way that Driscoll would be the only supplier able to meet the specifications and on that basis would be awarded the contract. At a public hearing before this Special Commission, Masiello described this procedure as follows:

"[I]f I didn't have the allowance item, I would have a supplier write the specifications, what is known as a proprietary spec which means only he can furnish it and this absolutely assured him of getting Driscoll Weber. What we would do is he would supply me a kitchen cabinet specification that couldn't be duplicated other than with a Yorktowne cabinet so when the contractor did find a supplier that was lower than his bid and through my, namely, Mr. John Wackell who checked the kitchen cabinets, when they were presented to us, we could knock it down for a million reasons; too thin, no lamination on the inside, any number of reasons to meet the specifications until we just steered him right to Mr. Driscoll. That was another way it could be done."²⁹

In exchange for assuming Driscoll of supply contracts, Masiello required that he (Driscoll) make payments or "kickbacks" to him.

At a private hearing, before the Special Commission, Frank Driscoll, co-owner of Driscoll-Weber, stated that Masiello told him that he would have to make payments to Masiello if his firm were to supply cabinets on Masiello projects.³⁰ In public testimony before the Commission, Masiello described the same understanding and characterized it as a "kickback" arrangement.³¹ Driscoll supplied cabinets on five of Masiello's housing for the elderly projects.* He testified that in total he paid Masiello approximately \$20,000 in the form of cash payments, each for political contributions, and checks payable to third parties (used to conceal the identity of the final recipient, Masiello).³²

On March 26, 1976, the THA accepted the specifications for Yorktown plastic cabinets which Driscoll supplied.³³ On May 12, however, they decided to use wooden cabinets instead.³⁴

In late June, Ralph Grillone of Wood-Hu Kitchens, Inc. went to the job site and was given the old specifications to read. Since Wood-Hu did not supply a

*For a full account of the Masiello-Driscoll relationship, see the chapter on Driscoll Weber elsewhere in this report.

plastic cabinet, Grillone did not intend to submit a bid. Later, however, he returned to the site, saw the new specifications and decided to bid. On August 17, the bids were opened and Wood-Hu was the lowest bidder by some \$10,000.³⁵

That evening, the THA met and after discussion decided to award the contract to Wood-Hu.³⁶ On August 19, 1976, the THA notified Wood-Hu of the award.³⁷ However, on September 14, John Wackell of M&A informed Wood-Hu that its cabinet did not meet specifications and that it would have ten days to submit another.³⁸ That evening Wackell also informed the THA.³⁹ Shortly thereafter, Grillone wrote to Joseph W. Kane, General Counsel for the Department of Labor and Industries, to protest this turn of events. He stated that his cabinet was "equal if not better than what was specified".³⁷

On October 5, Wackell told the THA that there would be a hearing on the matter before the Department of Labor and Industries on October 7. The THA voted to give M&A full support in whatever action it might take in the matter.³⁸ At the hearing, Kane ruled that Wood-Hu's cabinet did indeed meet the specifications and that Wood-Hu should be awarded the contract.³⁹ Another hearing was held on January 20, 1977 to hear a charge by Driscoll that Wood-Hu's product did not meet the specifications. Again, Kane ruled in Wood-Hu's favor, this time after the THA claimed they were satisfied with the product.⁴⁰ Wood-Hu ultimately supplied the cabinets on the Taunton project. This incident marked the end of a long period during which Driscoll-Weber had a near monopoly on kitchen cabinet supply contracts for housing for the elderly projects. Between 1973 and 1977, Driscoll Weber supplied cabinets to 92 housing for the elderly projects. The 42 contracts Driscoll-Weber received in 1973 and 1974 represented over 80% of all Kitchen cabinet supply contracts awarded during the period. Since 1977, however, Driscoll-Weber has not been a dominant supplier of cabinets on housing for the elderly projects.⁴¹ Indeed, in 1978 Driscoll-Weber's sales fell back to \$24,000, level of 1971 from a peak of \$1.2 million in 1975.⁴²

TAUNTON HOUSING AUTHORITY

DCA PROJECT # 667-1

Project funded:	5/7/73
Contract signed:	4/24/74
DCA Approval:	6/14/74
First payment:	2/6/75
Last payment:	7/11/78

TOTAL PAID TO M&A:	<u>\$ 175,118.95</u>
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TOTAL COST OF CONSTRUCTION:	<u>\$2,885,000.00</u>
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MASIELLO-FALL RIVER HOUSING AUTHORITY CONTRACT

The Fall River Housing Authority (FRHA) is one of the oldest and most active in Massachusetts, due primarily to the heavy concentration of elderly citizens in the Fall River/New Bedford area. The FRHA was created in 1938, and currently has nineteen housing for the elderly projects under its control as well as leased housing and rental assistance programs.¹ The authority consists of five commissioners, four of whom are appointed to five-year terms by the mayor with the approval of the City Council, and one who is appointed by the Governor, also for a five-year term. Their full-time staff includes an Executive Director and Assistant Executive Director. The Housing Authority relies on both federal and state funding for the construction and maintenance of its units.

In addition to new construction, the FRHA oversees renovation work as well. This work is called "modernization" by the federal government, and can be especially important in areas like Fall River where many projects are decades old. In the spring of 1975, the Housing Authority decided to seek federal funds for modernization work at several of its projects. By a letter dated April 24, 1975, the FRHA, through John Arruda, its Executive Director, sent a list of its priorities for its modernization program to the federal Department of Housing and Urban Development (HUD). Arruda proposed re-roofing projects at Mass. Project 6-1 ("Sunset Hill") and Mass. Project 6-2 ("Harbor Terrace"), along with waterproofing and a sprinkler system at Mass. Project 6-8 ("Highland Heights").² Three months later, Edward Pollock of HUD wrote to Arruda awarding \$482,000 in modernization funds, and included as approved the projects at 6-1, 6-2, and 6-8, listed above.³

"The FRHA did little else concerning these modernization projects in the final months of 1975. However, during that time other people became interested, among them William Masiello, of the Worcester architectural firm of Masiello and Associates. One reason Masiello was interested was that by late December, 1975, he could see that business was slow and likely to get slower. In fact, he considered postponing the consultant payments made from the corporation to Frank Masiello. These payments were made as part of William Masiello's purchase of Masiello and Associates from his brother.⁴

Masiello was told of the upcoming work in Fall River by Charles Theodore, a consulting engineer with whom Masiello had had a long business and personal relationship. Theodore and Masiello were very close. Among other things, Theodore generated substantial amounts of cash for Masiello, including money Masiello gave to Robert Vey, the Director of Boston's Public Facilities Department.⁵ Masiello said that Theodore not only told him of the upcoming

projects in Fall River, but also said that he could arrange an introduction to John and George Basile, Dedham contractors who could help Masiello obtain the design contracts from the FRHA.⁶ Both Theodore and Basile had worked with the FRHA before, and Masiello knew this.⁷ In addition, Theodore had hired the Basile's construction firm, Brookline Construction Co., to do work at the Otis Air Force Base. The architect for that job was Masiello and Associates.⁸ Masiello said that he knew he would have to pay to get the work in Fall River, but that he trusted the Basile brothers because of Charles Theodore's strong recommendation.⁹

Masiello accepted Theodore's offer and scheduled a meeting with the Basiles. Theodore spoke with Masiello prior to the meeting, telling him that John Basile had had a heart attack, and that their construction firm had gone bankrupt. Masiello met John and George Basile at their office in Dedham. The Basile brothers told Masiello in some detail of the modernization work coming up in Fall River. They also told Masiello that an interview with the Housing Authority could be arranged, and that Masiello and Associates would subsequently be awarded the contracts -- if Masiello agreed to pay 15 percent of the design fees to the Basiles. Masiello immediately objected to paying 15 percent, saying that he would not pay such a high percentage. A figure of 10 percent was finally settled upon.¹⁰ Masiello believes it was at this meeting that he wrote out a \$200 corporate check (Masiello and Associates check number 3292) payable to George Basile, which Basile cashed at Boraschi's Restaurant in Dedham.¹¹ Although the purpose of this check is not clear, Masiello said it may have represented a token payment to Basile, or may simply have been for extra cash Masiello needed.¹²

At this same time, in February 1976, the FRHA was beginning to act on the modernization work approved six months earlier. On February 11, 1976, the Housing Authority voted to place advertisements in the area newspapers of the upcoming projects.¹³ Sometime later, after meeting with the Basiles, Masiello and members of his staff went to Fall River to be interviewed by the Housing Authority. However, there is no record in the FRHA minutes of any architects being interviewed for these projects.¹⁴ In any event, the minutes do show that on March 9, 1976, Masiello and Associates was selected as the architect for modernization work at Mass. Projects 6-1, 6-2, and 6-8. Their selection, however, was not unanimous; Housing Authority member Frank Grimes first moved that Continental Engineering Corporation of Fall River be chosen, but there was no second. Owen L. Eagan, Jr. then moved that Masiello and Associates be awarded the contracts. Eagan's motion was seconded by Henry S. Gillette, Sr., and supported by these two men and Alan Jarabek. Grimes voted no, and William Steele was absent.¹⁵

Masiello and Associates entered into a contract with the FRHA for the modernization work on April 9, 1976. Attached to this contract was an "Exhibit B" submittal, required by HUD, which listed by project the architectural fees proposed by Masiello and Associates. The firm sought fees of \$25,300 for re-roofing at 6-1, \$4,600 for re-roofing at 6-2, \$5,500 for waterproofing at 6-8 and \$17,525 for the sprinkler system at 6-8. The proposed fees thus totalled \$52,925. The contract was signed by Masiello and Associates President Richard L. Brown and by Alan Jarabek of the FRHA, and attested to by John Arruda, Executive Director of the FRHA.¹⁶

It is important to understand how the fees for these contracts were calculated. The architect submitted what was called the "maximum basic fee" (also called a "not-to-exceed-fee") for each project. The architect would then bill against the totals according to the hours each employee put in on each separate project. He could bill up to the maximum basic fee but no higher and, should less time be spent on the project than estimated, the architect would receive a correspondingly lower amount of money. This is in contrast to a "percentage of construction cost" method where the architect receives a fee based on a fixed percentage of the construction cost of a project, regardless of the hours actually worked. The FRHA approved Masiello's fee proposals and sent them to HUD for review and final approval. Abraham Gammal, of the HUD Boston office, conducted the review but refused to accept the Masiello submittal. In fact, his initial examination of the projects in May 1976 substantially reduced the fees sought. He set a fee of \$13,000 for 6-1, \$5,200 for 6-2, \$2,600 for waterproofing at 6-8, and \$20,000 for the sprinkler system at 6-8. Gammal's total was \$40,800, some \$12,125 lower than Masiello's.¹⁷

Masiello became aware of this fee dispute, and tried to influence Gammal's decisions both directly and indirectly. For example, the FRHA actively supported Masiello, and in a pointed letter dated June 1, 1976, John Arruda told HUD that Masiello had justified his fees as necessary to do the job well, and also stated that the contract should be executed "as soon as possible...because it is very important that we get this modernization completed by this summer."¹⁸ Still, nothing seemed to change HUD's position. Masiello once told Abraham Gammal over the phone that if the projects ran over the established maximum he would be in with the necessary documentation for additional money, and that he "better get it."¹⁹ HUD reviewed the case a second time and fees of \$21,000 for 6-1, \$4,600 for 6-2, \$2,600 for waterproofing at 6-8, and \$14,500 for the sprinkler system at 6-8.²⁰ HUD then made a final decision which was sent to the FRHA in a letter dated June 9, 1976. HUD had set fees of \$14,500 for 6-1, \$4,600 for 6-2, \$3,200 for waterproofing at 6-8, and \$21,000 for the sprinkler system at 6-8.²¹ The

HUD maximum of \$43,300 was nearly \$10,000 less than that requested by Masiello, and agreed to by the FRHA. A revised contract, executed on July 15, 1976 by Masiello and Associates and the FRHA, incorporated these figures.²²

Masiello still had to meet this bargain with the Basiles, however. On or about April 15, 1976, over a month after the FRHA selected Masiello and Associates and a week after the first contract was executed, William Masiello met with George Basile at the Powderhorn Restaurant on Atlantic Avenue in Boston. Masiello recalled that there was a party going on and other people he knew were there, including Charles Theodore.²³ Masiello spoke with George Basile, who asked Masiello for \$1,000, which Basile characterized as a "good faith" payment. Masiello agreed, and as instructed by Basile made out a \$1,000 corporate check (Masiello and Associates check no. 3531) payable to John McCann, and handed the check to Basile.²⁴ Masiello did not know McCann, but Theodore referred to him as an attorney.²⁵ The check was endorsed "John McCann" then co-endorsed by "George Basile" and "Peter [illegible]", and cashed.²⁶ McCann, who is not an attorney, stated in interviews with Commission staff that he never saw or signed that check, and voluntarily produced his driver's license as an exemplar of his signature. He also said that while he later worked for the Basiles, he was not on their payroll at that time.²⁷ This was the first major installment of the 10 percent deal for the Fall River contract.

The architectural work on these projects was underway during the summer of 1976, and on August 6, 1976, Masiello & Associates submitted their first invoice to the FRHA, for \$7,538.45.²⁷ The Housing Authority issued a check in that amount to Masiello & Associates on August 13, 1976.²⁸ By agreement, the balance of Masiello's 10 percent payoff now came due. Interestingly, Masiello stated in interviews that although the fee had been reduced, he was still liable for 10 percent of the original fee, which was \$52,925.²⁹ The balance due, following the \$1,000 check on April 15, was therefore about \$4,000. Masiello instructed his secretary, Audrey Rawson, to make out a \$4,000 check to Basile Associates.³⁰ Rawson did so on or about August 16, 1976, and that corporate check, (Masiello & Associates check number 3871) was transmitted to the firm, endorsed "Basile Associates", and cashed.³¹ This payment of \$4,000 discharged Masiello's obligations to the Basiles for their role in obtaining the FRHA contract for his firm.

Masiello still faced other problems on this project, however. He needed to be certain that his first invoices to the FRHA were for as much money as possible. HUD allowed an architect up to 50 percent of the "maximum basic fee" for drawing up the plans and specifications that were sent to contractors for bid. The rest of the fee came from supervising the construction work, to insure

compliance with those plans and specifications. Masiello wanted to get as close as he could to the 50 percent allowed for two reasons: one, he knew that he had to cover the \$4,000 payment due to the Basiles when the first FRHA check came through, and two, he knew that once the construction supervision phase of the job began it was hard to make a substantial amount of money, because the number of hours that could be spent supervising were very limited. In other words, while it was virtually impossible to tell how many employees worked what hours on the actual design work done in Worcester, the supervision phase required few employees and their hours were restricted to those worked by the contractor and easily documented.³²

To reach this 50 percent goal, Masiello instructed architects Richard Brown and Wayne Salo, and probably other employees to bill time to the Fall River jobs that were actually spent on other projects. This is generally referred to as "payroll padding" and simply means that because the hours billed are inflated, (Brown for example, billed at \$35 per hour) so too are the fees. It is difficult to determine how many hours were fraudulently billed on this project, but it was probably in the thousands of dollars.³³ This payroll padding was confirmed in the testimony of Rawson, Brown and Salo before the Commission. Rawson testified that both she and William Masiello instructed employees to bill hours to the FRHA that were spent on other work.³⁴ Brown, and Salo also testified that they were instructed to "bill heavy time" to the Fall River job to ensure a certain cash flow for the firm.³⁵

Masiello had payrolls altered on other jobs as well, but ordinarily to receive payment for work done on behalf of various public officials, which those officials did not pay for. In other instances, Masiello raised money for payments or "contributions" from contracts he awarded amenable consultants or suppliers, but in Fall River he had no such contracts to hand out. He thus chose payroll padding as a means of raising necessary money.

Masiello & Associates continued working and submitting invoices to the FRHA through 1976 and into 1977. In May, 1977 Audrey Rawson wrote to Masiello's clients to inform them that the firm had changed their name from Masiello & Associates to Elm Park Associates. There were also new officers and directors: Frank Masiello was listed as President, Philip J. Burne as Executive Vice President, and Audrey Rawson as Treasurer. They also comprised the Board of Directors. William Masiello, formerly the Treasurer and a director of the firm, was nowhere to be found.³⁶

The FRHA apparently approved of the firm's work under any name, for they selected Elm Park Associates for another project. The FRHA's minutes show that

on May 9, 1977, an inspection conducted by Gregory Kleftis of HUD*, Joseph DiSanti, Assistant Executive Director of the FRHA, and a "representative" of the architect led to a decision to replace the roof at Mass. Project 6-8. The cost was estimated at \$15,000 and the architect's fees were put at \$1,500. Frank Grimes, who opposed Masiello's selection in March, 1976, moved that Elm Park Associates be selected as the architect; Henry Gillette, Sr. again seconded, and Elm Park was unanimously chosen.³⁷ The FRHA notified HUD of its action in a letter dated May 13, 1977, and stated that the necessary funds to cover the work were available.³⁸ The Housing Authority wrote to Elm Park on June 24, 1977 and directed them to proceed with the development of plans and specifications for the work.³⁹

Elm Park apparently proceeded with this work, as indicated by a September 1, 1977 letter from William Masiello in his capacity as "construction administrator", which informed the FRHA that the plans and specifications were ready to go to interested bidders.⁴⁰ Strangely, nothing else was done on this project: not only was the work never bid on, and hence never done, but Elm Park never submitted any bills for whatever work they did. As seen earlier, Masiello was willing to pad his payroll to reach the 50 percent allowed at this stage, and although the amount of money involved is comparatively small, no invoices were sent and no checks were issued for Elm Park's efforts.

Elm Park Associates effectively ceased doing business in May, 1978 and Audrey Rawson so informed the firm's clients. On August 3, 1978, the FRHA wrote to HUD requesting approval of Charles Jacobs Associates as the architects to replace Elm Park. The FRHA estimated the remaining fees at \$1,250.⁴¹ It is not clear whether the work in Fall River was ever completed. Jacobs, in an interview with Commission staff, said he decided not to take the project, because the remaining fees were not worth the trouble and there would be considerable delays in payment.⁴²

The Masiello contract with the FRHA points out some standard features of Masiello's business procedure. First, he agreed to buy the contract, in this instance through an intermediary, and this time for 10 percent of his architectural fees; second, the payments were made by the corporation, so that he might deduct them from his taxes; and third, he found a way to cover the payments, by submitting fraudulently inflated invoices. In this manner, he got the contract, made his tax-deductible payment, and increased his receipts to cover the expense. Masiello testified before the Commission that he in fact did

* Kleftis was indicted by a Federal Grand Jury in Boston on November 19, 1980 for violating 18 U.S.C. 201(g) and 371 by defrauding the government through the acceptance of illegal gratuities. Kleftis allegedly received these gratuities in connection with federal projects at the Somerville Housing Authority. Kleftis was arraigned on November 25, 1980, and is scheduled for trial in late January, 1981.

pay for this contract, and did so through John Basile.⁴³ George Basile, who was called to testify before the Commission following a lengthy legal battle, refused to give any evidence concerning this contract.⁴⁴

The Special Commission did not extend its investigation of the FRMA contract awards past the stage of organizing documentary evidence and conducting initial interviews because of the ongoing investigations in Fall River by the U.S. Attorney's Office. That investigation resulted in the arrest and conviction of FRMA Assistant Executive Director Joseph DiSanti for conspiracy and extortion in violation of 18 U.S.C. 1951, the Hobbs Act.* The investigation is still continuing.

* DiSanti was arrested on February 21, 1980 and charged with two counts of extortion in violation of the Hobbs Act by demanding \$7,500 in payments from a Westboro Contractor, Plumhouse, Inc. DiSanti was indicted on May 7, 1980, and convicted on September 4, 1980.

MASIELLO'S STRATEGY TO WIN THE
SPRINGFIELD MENTAL HEALTH CENTER
CONTRACT

INTRODUCTION

The following account describes how William Masiello developed and executed successfully a sophisticated, corrupt strategy to win for Masiello & Associates the multi-million-dollar design contract for the Springfield Mental Health Center (SMHC). This strategy involved plans to neutralize the opposition; assure the place of Masiello & Associates among the three finalists chosen for the project by the Designer Selection Board; and then guarantee the firm's selection through a political contribution. The motivation for Masiello's development of this strategy came out of his unexpected loss of the \$5.5 million Bristol County Jail project; thus, this account begins with a description of why Masiello thought he lost the jail project; how he felt about it; and what he decided to do.

THE UNEXPECTED LOSS OF THE BRISTOL COUNTY JAIL

William Masiello testified at a public hearing before the Special Commission that the Bristol County Jail project was one he particularly desired to acquire for Masiello & Associates. He was confident the firm could execute that job successfully:

The Masiello firm over the past years, their specialty with prison work, and we were probably, contrary to what you people think, probably the foremost architects in prisons in the United States and I emphasize that..... Every time a prison came up we were one of the three.¹

Masiello said he became "rip-roaring mad"² when he learned, soon after the DSB's selection of three finalists, that this "short list" contained not only the Masiello firm name, but also that of the Boston architectural firm of Desmond & Lord, and that the latter firm was most likely to win the contract.³ Masiello said he was especially disturbed at the probable selection of Desmond & Lord because the firm had never done any prison design work.⁴

Immediately after learning that his firm was one of the three DSB finalists, Masiello began soliciting political support for the final selection by the Commissioner of Administration & Finance (A&F).⁵ He learned quickly that he was not going to get the job when he spoke with Senator James A. Kelly, Jr.,

Chairman of the Senate Ways & Means Committee, and with Republican fundraiser Albert "Toots" Manzi.

The next morning I went to see Senator Kelly and I explained to Senator Kelly how I was or the firm was one of three selected for the Bristol County Jail project.

I believe he called Mr. Zabriskie [Deputy Commissioner of A&F] and I don't remember the conversation, but I do remember the results of the conversation. He indicated to me that Mr. Zabriskie was aware that my name was there, but like I say, I don't remember the conversation. But, I knew when I left Senator Kelly that the project had a problem, that we were not going to get it.

I talked to Senate President Harrington, I asked him if he would apply a little pressure to the administration, which I am sure he did. I don't remember the results of that. I then took a different approach. I was a Republican, and I had been on the Republican Town Committee and I attended the 1970 and 1966 Republican conventions, so I went to see Senator Parker. I talked to Senator Parker to see if he could use a Republican slant to see if I could get the project. He came back to me again with the same negative result, I wasn't getting anything positive. So, it was almost from the first minute of the next day that I knew that there was no way I was going to see this project.⁶

Masiello's next approach was to "Toots" Manzi:

Later on in the evening I kind of laid back and I waited, I knew Mr. Manzi would be in the building, and I waited for him and I approached Mr. Manzi. When I approached him I told him how I had been selected as one of three and he kind of threw his hands up in the air and he said I'm sorry, there's nothing I can do for you.⁷

Masiello told the Commission's staff, in an interview, that he then asked Manzi whom he should talk to. Manzi told him to see Victor F. Zuchero, Executive Director of the Sargent/Dwight Committee.

Masiello testified that he met with Zuchero in his sixth floor office on the corner of Beacon and Bowdoin Streets, across from the State House. During that meeting, Masiello angrily complained to Zuchero that, despite his strong Republican background, he was on the verge of losing the Bristol project to Desmond & Lord.⁸ Zuchero later testified before the Commission that Masiello had visited his office on one occasion to complain about his failure to obtain state work. Zuchero said that Masiello had become abusive and had been asked to leave.⁹

All of Masiello's efforts to win the jail project were fruitless. The DSB short list of February 13, 1974 was quickly followed by the selection of Desmond & Lord by the A&F Commissioner, William I. Cowin, on February 19, 1974.¹⁰ In an interview Masiello said he was stunned: "overnight I knew I was gone. I never saw anything move so fast."¹¹

THE BEGINNING OF A NEW STRATEGY

Truce Discussions

Masiello described in public testimony how he later met D. Richard Thissen, president of Desmond & Lord, and embarked on a series of "truce discussions" with him:

Well, as I told you earlier our offices were in the Mechanics National Tower Building in Worcester, in the basement portion of the complex on the eastern side down in the basement was a restaurant known as J&T's which members as well as myself frequented there either for lunch and/or for dinner. On one occasion while I was in there I ran into Mr. Thissen. I was quite surprised. It was then that I found out that he owned or was a partner in this restaurant.¹²

This encounter was the first of several and the discussion centered on both the Bristol County Jail project and the Revere Middle School project which Masiello had also lost to Desmond & Lord. According to Masiello's testimony, he told Thissen that he had pulled himself out of the Revere project because he didn't wish to engage in a bidding war for it.¹³

According to Masiello, he had been approached by Mayor William Reinstein of Revere who knew he wanted the project:

Mr. Reinstein approached me, asked me if I was interested in the school. I told him I was and would be willing to pay 8 percent cash. He told me he had an offer of 15 percent cash. I immediately took myself out of the competition simply because we were dealing illegally and I also felt that if he told me he had somebody else going for 15 percent and I offered 16, and I'm sure if the man offered 15 he would know I made something higher than what he was offering. So, I never got myself into a bidding war with any architects. I don't think I done it that often, but I didn't get into a bidding war with Reinstein, I just simply pulled myself out.¹⁴

Two contracts connected with the Revere Middle School project were awarded to Desmond & Lord: on 3/16/73 a contract to convert the old high school to be used as a middle school with design fees of \$50,000; and on 7/11/74 a contract for construction of a new middle school with design fees (phases I & II) of over \$150,000.¹⁵

According to Masiello's testimony, Thissen's response about the Revere School Project was:

that he got it because of the Massport Authority, and that's where I started to tell you just a few minutes ago, the school that they were replacing, it was a replacement school that was in the flight pattern of one of the runways over Logan which created a lot of noise, and the Mass Turnpike -- I mean the Massport Authority was paying to replace the school.

He indicated to me it was because of his association with the Massport Authority that he was able to acquire the architectural design. There was no talk about what he paid or what he didn't pay.¹⁶

In these discussions with Thissen, which took place at JT's over a period of weeks, Masiello eventually came to the point he had in mind -- a truce between

his firm and Desmond & Lord:

Q. Now, was there further conversation with Mr. Thissen about any arrangement that you and he would make?

A. Yes, I knew that Mr. Thissen was, let's say as I was, politically motivated. I felt that we should come to some sort of a truce. If we were going to go after projects that we should let each other know which projects we were interested in so we wouldn't get into a situation as we just came through, which I was on the losing end.

So, rather than make him an enemy, I made him an ally.

Q. What did you work out with him?

* * *

A. There was no discussion we were to pay one another or we were going to pay for a project, it was just simply a truce between us, and if he went after a project I wouldn't go after a project. If I went after a project he wouldn't go after the project.¹⁸

The overall purpose of Masiello's truce with Thissen was (1) to make sure that Masiello would not again make the effort to lay groundwork for a project as he had on Bristol and Revere to no avail and (2) to assure there would be no "bidding wars" between the two firms.

Making Peace With Zuchero

Masiello testified that while he was making the truce with Thissen, he had already (unbeknownst to Thissen) begun his pursuit of the next major contract to be awarded by the Commonwealth, the Springfield Mental Health Center. His first step was to go back to Zuchero to make peace with him:

My first approach was to go in to see Mr. Zuchero and make peace because I am sure I left him with a bad taste in his mouth from me.

I indicated to him that if the job on this project [the Springfield project] was not committed, if I was one of the three could I get this project. I would be willing to pay for it. He said to me that he would look into it.¹⁹

Masiello was attempting to ensure that if his firm got to the point of being one of the three finalists on the Springfield project, he would not lose it, as he had the Bristol project, at A&F.²⁰

Zuchero's recollections of this second Masiello meeting have been contradictory. When first interviewed by Commission staff on February 22, 1980, Zuchero acknowledged the possibility that he had discussed a state project with Masiello,²¹ and on February 26, 1980, Zuchero said that he recalled meeting with Masiello "late in 1974 ... before the election."²² During his private testimony before the Commission on March 3, 1980, Zuchero said that, while he recalled this second Masiello meeting, he had no recollection of Masiello discussing any state projects during the meeting.²³ Zuchero again

said he had no such recollection during his public testimony on May 7, 1980.²⁴

BECOMING ONE OF THREE

Masiello's next task was to assure that his firm became one of the three finalists selected by the DSB. To do so, he needed the support of the DSB representatives of the using agency (the Department of Mental Health) and of the BBC.

Masiello's "next approach"²⁵ was to James Kerr, the acting chief engineer of the Department of Mental Health, who was its voting representative to the DSB.²⁶ Kerr had "always been a thorn"²⁷ in Masiello's side because of another project his firm had with the department, the Joseph P. Gentile School, which was still listed as an active design contract even though it had been dormant for years. According to Masiello, Kerr always cited this as a pending project in order to get Masiello's name removed from further DSB consideration for new work.²⁸ Masiello told Kerr that his firm was willing to give up the Gentile School project in order to advance his candidacy for SMHC. Masiello testified that Kerr agreed to give Masiello his first-choice DSB vote for the Springfield project.²⁹

"Serenading" Kerr For His DSB Vote

Masiello testified that he began a process of what he called "serenading" Kerr with entertainment and tickets to sporting events, including one occasion in the summer of 1974 when he drove to Kerr's Norwood home and dropped off some Red Sox tickets.³⁰ Masiello stated, during an interview with Commission staff, that he received a commitment of Kerr's vote during a luncheon with him at Jimmy's Harborside restaurant in Boston.³¹

Masiello "made Kerr feel good" when he introduced Kerr to Masiello's friend, Senator James A. Kelly, Jr., in his State House office. This meeting was arranged by Masiello during one of the Department of Mental Health's budget hearings before Senate Ways & Means. Masiello said that he also asked Kelly to help Kerr by arranging to have Kerr promoted from acting to permanent chief engineer with the Department of Mental Health.³²

In an interview with Commission staff on January 3, 1980, Kerr acknowledged that on Department of Mental Health projects, he controlled the selection of the three finalists by the DSB with "a 75% batting average."³³ Kerr later said in private testimony before the Commission that he "customarily" proposed the three named by the DSB, although general discussion might then ensue.³⁴

Kerr insisted, during his January 3, 1980 interview, that he could not recall being entertained by Masiello,³⁵ but later recalled, during his private testimony on January 11, 1980, a lunch, possibly at Jimmy's Harborside, with Masiello. Kerr could not recall the date of that lunch, but said that it was prior to the Springfield Mental Health Center DSB vote on September 25, 1974.³⁶ Neither could Kerr at first remember the receipt of any tickets for sporting events from Masiello,³⁷ but later told the Commission that his wife had reminded him that Masiello had delivered two such tickets to Kerr's home on a Saturday morning but that Kerr did not attend the game.³⁸

Kerr did recall a meeting with Masiello in Senator Kelly's office during his interview on January 3, 1980. He indicated that, while he could not remember the subject matter, it did not concern his promotion from acting to permanent chief engineer.³⁹ When he testified before the Commission, Kerr said that the subject of the meeting with Senator Kelly and Masiello was funding for the Gentile School Project. Kerr said that, while he and Masiello may have "joked" about a raise for Kerr, neither Kelly nor Masiello was involved in his promotion.⁴⁰

When interviewed on January 3, 1980, Kerr indicated that he had had no discussion with Masiello regarding the SMHC project either before or after his DSB vote.⁴¹ However, on January 11, 1980, during his private testimony, Kerr said that he may have received a telephone call from Masiello, and that Masiello may have asked Kerr for his number one DSB vote. Kerr testified that he did not give Masiello a commitment on how he would vote.⁴²

Early in his private testimony, Kerr indicated that he perhaps recommended Masiello as one of the DSB finalists, and that he did recall voting for the firm.⁴³ Kerr later in that same hearing said that his best recollection was that he did not recommend Masiello,⁴⁴ that he in fact "spoke out" against the firm and eventually voted against it.⁴⁵ As this hearing progressed, Kerr indicated that, prior to seeing the list of applicants at the DSB meeting on September 24, 1974, he did not know that Masiello was an "official" candidate for SMHC,⁴⁶ and that he had no recollection of Masiello calling him prior to the DSB vote.⁴⁷

Lining up the Vote of the BBC

Masiello publicly testified⁴⁸ that he then proceeded to the BBC in order to secure the commitment of its Director, Walter J. Poittrast, to vote for Masiello's DSB application on the SMHC.⁴⁹ Poittrast told Masiello that he was going to be on vacation on the day of the scheduled DSB vote, September 25, 1974. Masiello then asked for the commitment of George Rushton, Deputy Director of the BBC, to

vote to include the Masiello firm on the DSB short list for Springfield.⁵⁰

In his December 21, 1979 interview with Commission staff, Masiello said that Rushton had previously been called by Senator Kelly to ask Rushton to cast his DSB vote on the SMHC in favor of Charles Jacobs, then in association with Charles Quigley of Robert Charles Associates, another architectural firm. Masiello was told of this call from Kelly by Rushton, and Masiello then asked Rushton to give him one of his other weighted votes on the Springfield project.

Walter Poitrast, Deputy Director of the BBC from 1963 to 1969, and its Director from 1969 to 1978, was interviewed by Commission staff on two occasions. He said in an interview on December 30, 1979 that his relationship with Masiello was limited to BBC projects, although Poitrast recalled being "treated" to a lunch at Jimmy's Harborside along with a group from the BBC on one of Masiello's birthdays. Poitrast said he never received gifts "of any magnitude" from Masiello, except a "bottle or two" at Christmas. While Poitrast does remember meeting with Masiello relative to state projects, he cannot recall specific subject matter or dates.⁵²

George Rushton, Deputy Director of the BBC from 1969 to 1980, was interviewed on January 17 and March 26, 1980, and said that he was never approached by Masiello for his vote before the DSB. Rushton also said he was not telephoned by Senator Kelly for Jacobs or Quigley.⁵³

Near the conclusion of his testimony on May 13, 1980, Masiello said that Poitrast eventually attended the September 25 DSB meeting, having cancelled his anticipated vacation in the interim.⁵⁴ His attendance was borne out by the DSB minutes of its 109th meeting.⁵⁵

Masiello Re-Contacts Zuchero

Masiello's "well laid plan"⁵⁶ continued when he asked former Commissioner of A&F (1966 to 1968) Anthony P. DeFalco to intercede with Victor Zuchero in Masiello's favor. Masiello testified that he did so at the Cohasset Golf Club where he met DeFalco. According to Masiello's testimony, DeFalco told Masiello that he was planning to hold a party for Governor Sargent at his home, and would speak to Zuchero then.⁵⁷

DeFalco was interviewed by Commission staff on December 10, 1979 and on August 13, 1980. DeFalco acknowledged that he played golf with Masiello, but can recall playing only at the Pleasant Valley Country Club in Sutton. On August 13, DeFalco said that he had hosted a Sargent party in his Needham home during the summer of 1974,⁵⁸ but did not recall being asked by Masiello to speak with Zuchero on Masiello's behalf.⁵⁹

Masiello testified that after he talked to Kerr, Poitrast, Rushton, and

DeFalco, he went back to see Zuchero and told him that he "would possibly be one of three" DSB finalists.⁶⁰ In interviews with Commission staff, Masiello said that Zuchero told him "the job is yours."⁶¹ It seemed obvious to Masiello that Zuchero had done some "checking up" on Masiello before committing the project to him.⁶²

When Zuchero was first interviewed by Commission staff on February 22, 1980, he indicated that he had never spoken to anyone except Governor Sargent and the governor's patronage secretary, Harold Greene, about individuals seeking state contracts.⁶³ Even with Greene, Zuchero said that their discussions might have extended to reviewing office seekers, but did not include those seeking contracts.⁶⁴ Zuchero was next interviewed, at his request, on February 26, 1980. Zuchero indicated that, on reflection, he "knew" that he had discussed certain architects with Greene, and possibly with Lt. Governor Donald Dwight.⁶⁵

In private testimony before the Commission on March 3, 1980, Zuchero confirmed that he had talked with Greene on such matters but that he had "no recollection" of contacting the Lieutenant governor with respect to those seeking state contracts.⁶⁶ In public testimony on May 7, 1980, Zuchero said he could not recall previously telling Commission staff, in the February 26, 1980 interview, that he had discussed those seeking state contracts with Greene and Lt. Governor Dwight.⁶⁷

Zuchero's testimony that he "checked out" potential designers and architects from lists which arrived from Greene's office⁶⁸ was confirmed by Greene in public testimony before the Commission. Greene was patronage secretary to Governor Sargent from December of 1969 through March of 1973. He testified on June 24, 1980 that he interpreted his duties to include reviewing with Zuchero the DSB short list of three finalists for the award of design contracts.⁶⁹ Greene testified that he received the DSB list from Albert Zabriskie, Deputy Commissioner of A&F from 1969 through 1974,⁷⁰ and then consulted with Zuchero to see if any of the listed architects was a contributor. The interviews and testimony of Zuchero and Greene thereby substantiated Masiello's contention that there was a pattern of "checking up" on potential state designers.

Masiello's belief that his plan to acquire the Springfield project was working well is illustrated by a conversation that he had with Thissen during this time period. According to Masiello's testimony:

One of those Tuesdays that I explained to you, I was in J&T's [restaurant; Thissen] was sitting at a table. I went over to him and I said what are you doing on the Springfield project, and he said nobody is going to get it and I looked at him and I kind of laughed and I said well, I'm going to submit an application. I said are you and he said no, I don't think I am going to. All along I practically knew I have got this project in my pocket based on my meetings with Zuchero and Kerr and Rushton.⁷¹

On September 25, 1974, the DSB met and recommended the architectural firms of ESO, Inc., Payette Associates, and Masiello & Associates as the finalists for the SMHC contract.⁷²

Masiello said that he learned of his DSB nomination on that same day, September 25, 1974.⁷³ He testified that he was playing golf at the Winthrop Country Club when he received a telephone call from Kerr who informed Masiello of his nomination by the DSE. However, in an interview with Commission staff on December 21, 1979, Masiello said that this call was from his secretary Audrey Rawson.⁷⁴ In Rawson's own public testimony before the Commission on May 1, 1980, she said that she received a telephone call from Frederick Kussman, then Administrative Assistant to the Director of the EBC, and the EBC "coordinator" with the DSB.⁷⁵ Kussman informed Rawson that he had "urgent" news for Masiello. Rawson testified that she then telephoned Masiello at the golf course. Rawson said that she received a telephone call from Masiello that same night telling her that he was with Kussman and that he had "received the contract for the Mental Health job."⁷⁶

THE FINAL STEP IN THE PLAN

Masiello proceeded, the next day, to contact Zuchero and inform him that he was now "one of the three" DSB finalists.⁷⁷ In an interview with Commission staff, Masiello said that he visited Zuchero "after I was on the list of three, after September 25, 1974,"⁷⁸ and "probably" on September 26 or 27.⁷⁹

Masiello testified that, upon his arrival at Zuchero's office at 21 Beacon Street, Zuchero and he walked across the street to the State House and into Lieutenant Governor Donald R. Dwight's outer office.

We got over to the outer waiting room, waited there a few minutes, he [Zuchero] got up and he went in, I assume because I didn't see which way he went, I'm sure he went in to talk to the lieutenant governor. Approximately a short time, maybe one or two minutes he returned, asked me to follow him. I followed him into Don Dwight's office. He made the introductions and left.

While I was there I indicated to Donald Dwight that I was interested in this [Springfield] project, and I would be willing to contribute a sizable campaign contribution. He was talking in terms of approximately \$5,000. I indicated to him that I didn't like to pay that much up front for a project because sometimes they fall by the wayside. We settled on \$2,000 in cash.

After I made the agreement I walked out, talked to Mr. Zuchero on the front of the State House steps, the top landing, explained to Mr. Zuchero that I made a deal with Donald Dwight for \$2,000 on the Springfield Mental Health Center.⁸⁰

Later in his testimony, Masiello described in greater detail the conversation that he had with Donald Dwight on this occasion:

The Witness: The substance was I asked him what this project was worth. I told him I would be willing to give him a contribution. He came back to me with the sum of \$5,000. Yesterday when I was here I think I clearly indicated how we had been burnt prior, namely the Joseph P. Gentile School, the Connelly School, we had paid heavy money up front to no avail, [before] the projects were started.

Mr. Mahoney: Did you tell that to Dwight, basically \$5,000---

The Witness: Probably, yes. I probably didn't point out to him what I am pointing out to you, I told him once the project got underway probably there would be more forthcoming, but I did use the word contribution. We did settle on \$2,000 and it was in cash.

Mr. Mahoney: And did you say more would be forthcoming if the project went forward?

The Witness: I don't believe I used that terminology as I am using it today, but I am sure I indicated to him when the project were to be completed he would be satisfied. I think that's the way I left it.

In other words, in a subtle way I indicated to him that there would be more coming once the project was completed.⁸¹

Masiello testified that, after this agreement, he talked to Zuchero on the State House steps, "the top landing," and advised him of the "deal."⁸²

Masiello "knew [he] had the job" after this first meeting with Dwight.⁸³

Zuchero's recollections of his meetings with Masiello changed from interview to testimony. In his first staff interview on February 22, 1980, Zuchero said that he never had a conversation with Donald Dwight, "or anyone working for him," relating to contracts.⁸⁴ When Zuchero was interviewed on February 26, 1980, he said that he had reflected on some of his February 22 comments and wished to amend them to say that he met with Masiello, "late in 1974 ... before the election," and that "the probability is that I sent him over to see Dwight." "Masiello might have said he'd make a contribution."⁸⁶

In private testimony before the Commission on March 3, 1980, Zuchero had "no recollection" of his having suggested to Masiello that Masiello should meet with Lt. Governor Dwight.⁸⁵ In that testimony, Zuchero also had no recollection of having told Commission interviewers, eight days earlier, that he had "probably" sent Masiello over to see Dwight.⁸⁶ In his public testimony on May 7, 1980, Zuchero said that he had "no recollection of taking [Masiello] over" to the Lieutenant Governor's office, nor any recollection of having had any conversation with Masiello after such a meeting.⁸⁷

INPUT INTO DESIGNER SELECTION: WHOSE CHECKMARKS

Donald Dwight testified privately before the Commission on January 30, 1980 that throughout his tenure as Lieutenant Governor, from 1971 through 1974, his only consistent input into designer selection occurred during the term of his first successor as A&F Commissioner, Charles Shepard.⁸⁸

Shepard served as Commissioner from 1970 until his retirement in 1971. In testimony before the Commission in February 25, 1980, Shepard said that he never conferred with anyone other than his Deputy Commissioner, Albert Zabriskie, about designer selection. Shepard testified that he "never had anything to do with Donald Dwight on any selection for the Designer Selection Board."⁸⁹

Dwight testified that he did not discuss designer selections with A&F commissioners after Shepard on a regular basis,⁹⁰ but indicated that he "may well have" been consulted from time to time on these choices by Shepard's successors, including David M. Marchand.⁹¹ Marchand was Assistant Commissioner of Administration from 1969 to 1971, and then became Lt. Governor Dwight's Chief Secretary and Counsel until he was appointed Commissioner of A&F. Marchand served as Commissioner from May of 1974 until January of 1975.

When interviewed by Commission staff on January 10, 1980,⁹² and during his public testimony on April 15, 1980,⁹³ Marchand said that he and Lt. Governor Dwight never communicated relative to designer selection. Marchand said that he could recall no such discussion with Dwight with respect to designer selection for the Springfield Mental Health Center.⁹⁴

Albert Zabriskie was appointed Deputy Commissioner of A&F by Dwight in 1969,⁹⁵ and continued in that position through the terms of the next four commissioners, until December 28, 1974. Zabriskie's duties included overseeing the DSB. Zabriskie was the Executive Secretary of the DSB from 1972 to 1974, and was involved with the selection of designers from the DSB short list.⁹⁶

Zabriskie testified at a public hearing before the Commission on April 16, 1980 that shortly after Dwight was sworn in as Lieutenant governor in January of 1971, he met with Dwight in the latter's second floor State House office. Dwight told him that he still wished to exercise influence over designer selection from the DSB short list.⁹⁷ Zabriskie then testified that he met with Dwight on a regular basis "throughout those four years" that Dwight served as Lieutenant Governor.⁹⁸ Zabriskie further testified ⁹⁹ that he informed each Commissioner of A&F who succeeded Dwight, until the change in administrations in January of 1975, of this input by the Lieutenant Governor.

Zabriskie testified that these meetings with Dwight were a "uniform and consistent practice throughout the terms of [all of the] Commissioners [of A&F] ... from 1971 through 1974."¹⁰⁰ When he met with Zabriskie, Dwight went over

the original copy of the DSB transmittal letter to A&F and made either a checkmark or a dot next to his selection from among the three finalists.¹⁰¹ Zabriskie testified that no one else but he and Dwight was ever present at these meetings,¹⁰² and that he actually saw the marks made by the Lieutenant Governor:

A. He would look at the letter [the short list from A&F] sit back in a chair and mark certain selections.

Q. Was there any discussion at the meeting?

A. Very little.

Q. Did Lt. Governor Dwight ask you any questions about any of the firms that were on that short list?

A. He did not.

Q. Did you volunteer any information to the Lieutenant Governor about any of those firms?

A. I did not.¹⁰³

Dwight testified that he did not recall ever having discussed designer selection with Deputy Commissioner Zabriskie after Dwight resigned from A&F in 1970. Dwight could not recall Zabriskie ever "bringing to his attention" the names of DSB finalists while he was Lieutenant Governor from 1971 through 1974, although Dwight thought it was "possible" that Zabriskie had done so.¹⁰⁴

Zabriskie testified that he had informed A&F Commissioner David Marchand of his meetings with Lt. Governor Dwight in a meeting in Marchand's office shortly after Marchand became Commissioner in May of 1974.¹⁰⁵ However, Marchand did not recall Zabriskie ever telling him that Dwight wanted to select any one designer from the three DSB finalists. The only input from Zabriskie which Marchand could recall was advising Marchand occasionally that one or another finalist might have had too much recent state work.¹⁰⁶ Marchand testified that he had no knowledge of anyone else within A&F discussing designer selection with Dwight.¹⁰⁷

Charles Shepard, who was Commissioner of A&F in 1970-71, testified before the Commission on April 14, 1980, that it was his recollection that he put checkmarks on the DSB short list of three, and that "to the best of [his] knowledge" there were no check marks on the documents when he received them.¹⁰⁸

Robert L. Yasi, presently a judge of the Suffolk County Probate Court in Boston, and Commissioner of A&F from 1971 to 1972, testified publicly on April 15, 1980 that he didn't know whether or not the marks on the DSB short lists were there when Zabriskie brought the lists to Yasi. Yasi noted that his selection from the DSB list was "made with Al's [Zabriskie's] input and no other with rare exception," and that it was possible that Zabriskie had placed the marks on the list as a means of displaying his own recommendations to Yasi.¹⁰⁹ Yasi's successor, William I. Cowin, Commissioner of A&F from 1972 through May of 1974,

testified publicly on April 14, 1980 that he didn't know who put the marks on his copies of the DSB short list.¹¹⁰

A Commission chart introduced in evidence during the public testimony of Zabriskie on April 16, 1980, showed that there were a total of 117 marks, checks or dots on a total of 127 designer selections from the DSB short lists during the tenures of Shepard, Yasi, Cowin and Marchand.¹¹¹

THE WINNING OF THE SPRINGFIELD PROJECT

On September 27, 1974, the Executive Secretary of the DSB, Albert Zabriskie, sent the DSB transmittal letter containing the three DSB nominees for the Springfield Mental Health Center to the Commissioner of A&F, David M. Marchand.¹¹² Listed alphabetically were the firms of ESO, Inc., of Brookline; Masiello & Associates, Architects, of Worcester; and Payette Associates, of Boston. The DSB transmittal letter was later attached to a cover letter sent from A&F to Alan Altshuler, Commissioner of Transportation and Construction, informing him that Masiello had been selected as the designer for SMHC. The cover letter bore the stamped signature of the Commissioner of A&F, David M. Marchand. Both documents were introduced in evidence during Marchand's testimony before the Commission on March 3, 1980.¹¹³

Marchand was shown these documents during his testimony, and noted that, in the left column of the DSB transmittal which identified Masiello as Marchand's selection, were the initials "DMM."¹¹⁴ Marchand had previously testified¹¹⁵ that it was his practice to indicate his selection among the DSB finalists by placing his three initials to the left of that firm's name. Marchand testified, however, that the initials which appeared to the left of the name of Masiello & Associates were a forgery.¹¹⁶ Marchand went on to testify that he had no recollection of the DSB short list for the Springfield project or of the cover letter to Altshuler stamped with his signature.¹¹⁷ Marchand testified before the Commission that he did not award the SMHC contract to Masiello & Associates.¹¹⁸ Marchand was "absolutely certain" that his initials next to the Masiello name were a forgery.¹¹⁹ Marchand knew of no one authorized to use his initials in that manner, nor of anyone who might have done so.¹²⁰ Handwriting expert Elizabeth McCarthy, in her public testimony before the Commission stated that, in her opinion, Marchand's initials on this document were forged.¹²¹

MASIELLO MAKES GOOD ON HIS COMMITMENT

William Masiello was formally notified of the selection of his firm for SMHC in an October 14, 1974 BBC letter, and a contract was executed on November 11, 1974.¹²² Before the contract was terminated by the BBC on March 1, 1978, the Masiello firm had received a total of \$100,710.08 for design services on the project.¹²³

Masiello told the Commission that no particular deadline for his promised contribution was set in the meeting with Dwight in which they made their deal for the SMHC project. However, he said he did "ha[ve] it in mind that Election Day" was it.¹²⁴ Masiello's testimony was that he had told Dwight that he would get back to him "as fast as possible."¹²⁵

Masiello testified at a public hearing on May 13, 1980 that he undertook to raise the promised \$2,000 contribution by issuing four company \$500 checks, having them cashed, and himself collecting the money.¹²⁶ One check was made out to Masiello; a second to his secretary, Audrey Rawson; a third to Raymond J. Allard;¹²⁷ and the fourth to Wayne O. Salo. "After they cashed the checks they handed me the \$2,000 and I brought it back to Mr. Dwight."¹²⁸

When Masiello was asked about the characterization of this amount as a "contribution" he said that Dwight had used the term "contribution" in reference to the \$2,000, but Masiello himself felt that it was "a kind word for payoff or bribe."¹³⁰

When Masiello testified on May 13, 1980, he said that he made out two of the four checks for November 6, 1974, but that they were actually cashed on November 5, 1974. Bank imprints on the check indicated cashing on November 5. The remaining two checks were made out by Masiello's secretary, Rawson, and those two before the correct date, November 5, 1974.¹³¹

Masiello further testified that Rawson had cashed his check as well as her own, and that Salo and Allard had each cashed theirs, all four on November 5, 1974.¹³²

In public testimony before the Commission on May 1, 1980, Rawson said that:

On November 5, 1974, Bill came in and asked me to write two checks, one for him and one for me in the amount of \$500. He asked me to turn the cash back to him;... He also told me that he had spoken to ... Wayne Salo and Raymond Allard, and that he had written two checks for them each in the amount of \$500. They went out to the bank and brought the money back to him.¹³³

Rawson testified that Masiello made a regular practice of generating cash in this manner,¹³⁴ and that the money was always put in "plain white envelopes,"¹³⁵ and was "usually in larger bills. Bill always liked hundred dollar bills rather than tens and twenties."¹³⁶ Rawson testified that all four checks numbered in sequence 2096, 2097, 2098 and 2099, "were written and

cashed on the same day ... near or about noontime"¹³⁷ on November 5, 1974. She said that the money was taken to Boston by Masiello.¹³⁸

On April 23, 1980, former Masiello architect Wayne Salo publicly testified that he was asked from time to time to cash corporate checks and return the proceeds to Masiello.¹³⁹ He said that he recognized the particular corporate check, dated November 6, 1974, as one which was made out by Masiello to Salo and actually cashed by Salo on November 5, 1974.¹⁴⁰

Raymond J. Allard, president of the Masiello firm from 1972 to January of 1975, testified on April 22, 1980 that he had cashed over \$10,000 in Masiello corporate checks from late 1971 until his departure in 1975, and returned the money to Masiello. "None of this money wound up in my pocket."¹⁴¹ Allard identified Masiello corporate check number 2098, dated November 6, 1974, as a particular \$500 check which he cashed and whose proceeds he returned to Masiello.¹⁴² Allard indicated that this check had his name as payee printed out by Masiello, and was actually negotiated by Allard on November 5, 1974.¹⁴³ All the checks, and the related ledger entries, were introduced in evidence before the Commission. Bank markings on all four checks showed that they had been cashed.

Having used his employees to generate \$2,000 in cash, Masiello testified that he then went to Boston to give it to Lt. Governor Dwight in the latter's State House office:

The Witness: ... on election day of 1974 I walked into Donald Dwight's office and I handed him \$2,000 in an envelope in cash, he took the 2,000 and put it in the left-hand side of his blotter and I walked out. Never saw -- well, I did see him, I wished him that he won that day and I indicated to him that in the event that he did it was nice to know that I had an open door to his office. On that basis that was the last time I saw Donald Dwight.¹⁴⁴

Masiello described the scene in Dwight's office in greater detail later in his testimony:

The Witness: Well, during and while the conversation [in Dwight's office], sometime I handed him the \$2,000 in an envelope.

Mr. Mahoney: You indicated--

The Witness: Which he took and put it not under the blotter but on top of the blotter in like a little side pocket.

Mr. Mahoney: He put it there. You didn't?

The Witness: He put it.

Mr. Mahoney: You handed it to him in hand?

The Witness: Yes.

Mr. Mahoney: And there was \$2,000 in an envelope?

The Witness: Yes, there was, sir.

Mr. Mahoney: And was it a blank envelope, do you remember?
Did it have anything on it?

The Witness: All my envelopes were blank.¹⁴⁵

* * *

Mr. Mahoney: And did you put any markings on the envelope?

The Witness: No.

Mr. Mahoney: And you handed it to Mr. Dwight. Was he standing behind his desk?

The Witness: Yes, he was. I believe he stood the whole time I was there, sir, that's how brief the meeting was.¹⁴⁶

Donald Dwight appeared before the Commission at a private hearing on January 30, 1980, before many of the details of Masiello's May 13 testimony had been developed. After leaving public office in 1975, Dwight had moved to Minneapolis, where he is a newspaper publisher. He appeared voluntarily on January 30; at his request, and out of respect for his former office, the Commission did not serve him with a summons.

Dwight testified that he had no recollection of meeting with Masiello in the lieutenant governor's office.¹⁴⁹ Dwight said he had no recollection of ever receiving a contribution from Masiello.¹⁵⁰ Dwight said he had no recollection of participating in the selection process for the Springfield Mental Health Center contract.¹⁵¹ At the conclusion of the hearing, Dwight told the Commission that he would voluntarily make himself available for future testimony at the Commission's request.

After Masiello's testimony, the Commission requested Dwight to return from Minnesota to testify further at a public hearing. The Commission, in particular, wanted to hear Dwight's response, under oath, to the evidence given by Masiello and Zabriskie. Dwight refused to appear. He remained outside Massachusetts thereafter, beyond the reach of the Commission's summons power.

In an effort to resolve the contradiction between the testimony of William Masiello and that of Donald Dwight, the Commission sought to confirm Dwight's presence in his State House office on election day, 1974.

Commission staff interviewed Brian Pollock, Dwight's aide and driver. Pollock indicated that on election day, November 5, 1974, he was "in and out of" the Lieutenant governor's office and spent most of the day coordinating the upcoming election party. Pollock did recall that his fellow driver, state trooper James Roche, had picked up Dwight that morning and had returned Dwight to the State House office at approximately 2:00 in the afternoon.¹⁵² Roche was

interviewed by Commission staff and confirmed the Lieutenant Governor's presence in his State House office "for at least two hours" on election day, 1974.¹⁵³

THE PROJECT DWINDLES TO A HALT

As early as June 24, 1974, the Department of Mental Health was considering a program change for the Springfield project: splitting up the original SMHC into three parts, with a "core" facility on the original site and two "satellite" buildings elsewhere in the community.¹⁵⁴ Shortly after the Masiello firm executed the SMHC contract on November 11, 1974, the BBC requested authorization to separate the original project into three entities, with a total project cost "not to exceed \$5,000,000."¹⁵⁵

On February 14, 1975, Masiello & Associates was notified by the BBC that the firm's "continued services," to include the reconfigured project, had been approved by A&F.¹⁵⁶

In response to continued program changes by the Department of Mental Health, the BBC transmitted three sets of preliminary plans to the Department for its review.¹⁵⁸ On March 1, 1978, the Masiello firm, which had changed its corporate name to Elm Park Associates, was notified by the BBC that it had been terminated as the architect of the Springfield Mental Health Center,¹⁵⁹ after 40 months under contract to the Commonwealth and \$100,710.08 in design fees.¹⁶⁰ The facility has not yet been constructed.

CONCLUSION

In this case, the Special Commission heard evidence that William Masiello had a strategy to win a major design contract from the Commonwealth. The strategy involved beating the system that had been set up to eliminate corruption and political influence from the process of awarding design contracts, the Designer Selection Board.

By "serenading" agency officials with favors, by impressing them with his political clout, and by lobbying them for at least one of their weighted votes on the DSB, Masiello assured his firm's selection as one of the three finalists for the project. He neutralized one of his main business rivals by agreeing to a "truce" to divide up the projects and avoid competition.

Masiello used all the political connections he could to help him with this

strategy. One series of connections finally led him where he wanted to go: from Toots Manzi and Anthony DeFalco to Victor Zuchero to the lieutenant governor of Massachusetts, Donald Dwight.

Dwight was identified in public testimony before the Commission by the man he had made his chief deputy, Albert Zabriskie, as the one who continued to control the award of design contracts throughout his four years as lieutenant governor. Zabriskie testified that Dwight did so by placing a mark next to the name of his favored firm on the list of finalists for the project brought to him by Zabriskie from the DSB.

Masiello testified to his conversations with Donald Dwight in his State House office in which a deal was made to award the contract to Masiello in exchange for a \$2,000 "contribution," in Masiello's words, "a kind word for payoff or bribe." Masiello also testified that he withdrew the \$2,000 from his firm by cashing four corporate checks on election day, 1974. The employees involved all confirmed their participation in the cash generation scheme. Masiello then, according to his public testimony, took the cash in a plain white envelope to the State House and handed it to Dwight in his office -- shortly after his firm had been awarded the contract.

When Dwight testified in a private hearing before the Commission, he said he could not recall meeting with Masiello. But after Masiello testified in public, Dwight refused to return to the Commonwealth to give evidence under oath at a public hearing.

Thus, the questions the Commission wanted to put to Dwight under oath about the award of the SMHC contract went unanswered by him. The result was that a Special Commission of the General Court of Massachusetts was refused the cooperation of the former second highest elected official of the Commonwealth on a matter concerning his official duties and within the Commission's mandate to investigate.



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